

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANTS AND JOINT APPENDIX

IN THE United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9432 **536**

JACK SEKULOW and ABRAHAM SEKULOW, a partnership, trading as SEKULOW BROTHERS, *Appellants*,

v.

11TH & F STREET VALET, INC., a corporation of the State of Delaware, and GEORGE GODA, *Appellees*.

Appeal from the District Court of the United States for the District of Columbia.

*United States Court of Appeals
for the District of Columbia*

FILED JAN 17 1947

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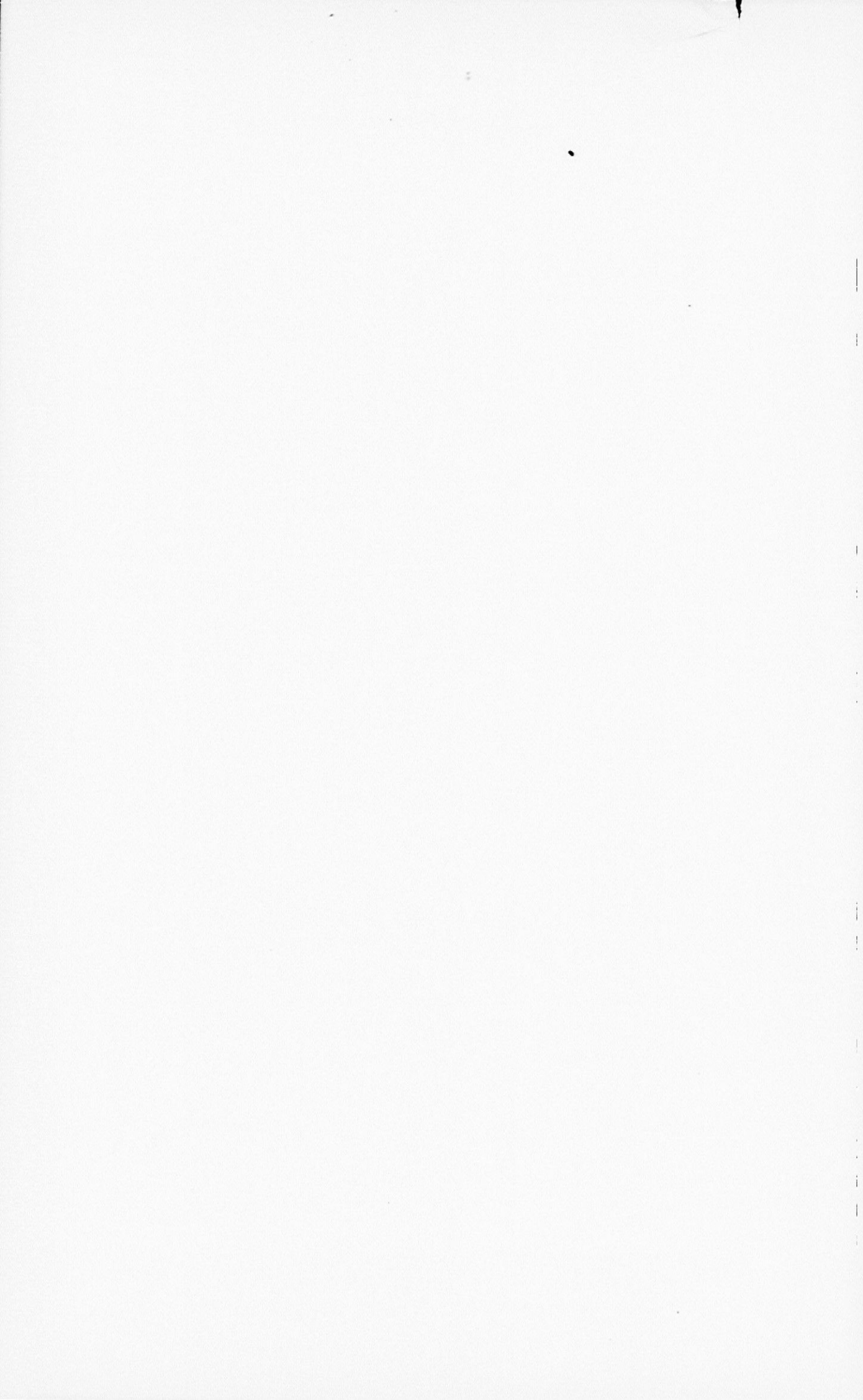
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v.

11TH & F ST. VALET, INC., a corporation, and
GEORGE GODA, *Appellees*.

BRIEF FOR APPELLANTS.

**Appeal from the District Court of the United States
For the District of Columbia**

JURISDICTIONAL STATEMENT.

This is an appeal by the appellants, hereinafter referred to as plaintiffs, from a final Order and Judgment of the District Court of the United States for the District of Columbia, by which it was ordered that judgment be entered for the appellees, hereinafter referred to as defendants, and that the cause be dismissed (App. 43).

The action was brought against the defendants, and sought the cancellation of a lease, the reinstatement of a prior lease, and the recovery of rent and money paid as a result of fraud and duress (App. 2). The defendants filed a joint answer (App. 26). The cause was heard, and as above stated, the Court, on July 30, 1946, entered judgment for defendants and dismissed the cause (App. 43).

This appeal was taken the 25th day of October, 1946, under the provisions of Title 17, Section 101, of the District of Columbia Code (1940 edition), and Rule 10 (a) of this Court.

STATEMENT OF THE CASE.

The ultimate facts are: Plaintiffs, in 1942, entered into a lease agreement with defendant, 11th & F St. Valet, Inc., which corporation was owned, controlled and dominated by defendant Goda; the term of the lease was from July 1, 1942, to June 30, 1945, and provided for the right to renew for a term of five years, at a rent not to exceed \$1,000.00 per month, provided defendant, Valet, Inc., still occupied the premises as a tenant. Before the expiration of the lease and within the time of plaintiffs' right to renew, the defendant Goda said I am not making money and will not renew, either sign a new lease at a greatly increased rent, or else my corporation will not occupy the property as a tenant, and you will be out on the street. Plaintiffs had built up a substantial business and could not, in September, 1944, find any other location. Defendants refused to give any information as to their lease with the owner, and delivered an ultimatum that plaintiffs must sign a new lease providing for rent of \$26,000 in excess of their option rights, or else; and the plaintiffs, under these circumstances, which constitute business duress, cancelled the then existing lease with the right to renew and signed a new lease providing for exorbitant rents. The plaintiffs seek the reinstatement of the lease of 1942 with its option rights and the cancella-

tion of the lease of 1944, and the recovery of money paid under duress.

A more detailed statement will now be made.

The plaintiffs Jack and Abraham Sekulow are brothers engaged in the retail hat business, with stores in several cities. In the latter part of 1940 they operated one store in Washington and were anxious to obtain a location in the F Street shopping area.

Shortly before the close of the year, one of the brothers, Jack, noticed a "For Rent" sign in the window of a store at 604 11th Street, N. W., which is just around the corner from the F Street shopping area (App. 44). Upon entering the premises Jack Sekulow was met by a man who introduced himself as Mr. Goda, who said that he was the one to see. Goda then told Jack Sekulow that the space for rent was on the second floor of this building, and Sekulow said there is a possibility of using the second floor though they wanted first floor space. Goda showed the premises and suggested that the plaintiffs try the second floor for a short period to see if they could make a go of it, and the parties agreed to enter into a lease for the second floor of the premises (App. 46).

From the conversations that the parties had with one another during the negotiations for the lease of the second floor, the plaintiffs believed that Goda was the owner of the building (App. 47). When the lease was presented to them by Goda for execution, the lease having been prepared by Goda's attorney (App. 46), the plaintiffs not being represented, they asked him why the name of the lessor was given in the lease as "11th & F Street Valet, Inc." instead of his own name. Goda said that the 11th & F Street Valet, Inc. is my corporation, I own it, everything that I own is in the corporation's name, and I am the corporation (App. 46). Plaintiffs and 11th & F Street Valet, Inc. executed the agreement (App. 11) for the leasing of the second floor for a period of six months, commencing on February 1, 1941, at a rental of \$150.00 per month together with a percentage

of the gross business. The lease provided for the right of renewal for four and one-half years at a rent of \$200.00 per month, together with a percentage of gross receipts.

In the early part of the summer of 1941 the plaintiffs were desirous of vacating the second floor, and they and Valet, Inc. entered into a lease for the first floor on a minimum guaranty plus percentage basis.

This second lease dated July 3, 1941 (App. 28) was for one year and contained an absolute option for four additional years, and was also prepared by Mr. Goda's attorney, the plaintiffs not being represented.

During the latter part of the first year of the term of this second lease the plaintiffs found the percentage arrangement to be burdensome to them and sought to obtain a new lease from Goda on a flat rental basis. Goda sought to await the final accounting of business done by the plaintiffs during the year, before fixing a flat rental, and, as the time for giving notice of renewal was expiring, the plaintiffs gave formal notice of renewal. Subsequently, sometime after July 1, 1942, plaintiffs and Valet, Inc. executed a new lease (App. 13) for the first floor, commencing as of July 1, 1942 for a term of three years, at \$750.00 per month for the first year, \$800.00 during the second year, \$850.00 for the third year, and with a renewal privilege of 5 additional years at a rental "not to exceed \$1,000.00 per month".

This third lease, as in the case of the former two leases, was prepared by Goda's attorney (App. 50), and the plaintiffs were not represented (App. 51).

Over this period of time these parties had become friendly toward one another, and the plaintiffs had confidence in the defendant Goda. When Goda presented this third lease for execution, only Jack Sekulow was present, his brother being in Baltimore, in which city the brothers maintain their office. Jack Sekulow signed the lease, but he took the lease with him back to Baltimore in order to have his brother sign it before delivering same to Goda.

The brother, Abe Sekulow, read the lease and called Jack's attention to the peculiar language of the option, which, after providing for the option to renew, continued "and provided further that the lessor still occupies the premises as a tenant of the owner". Jack Sekulow testified that he had not theretofore known of this quoted provision. Here there is a conflict; Mr. Kelly, attorney for Goda, testified that he told Jack Sekulow that Goda had told him he was not making money and that Goda should not bind himself to renew at any figure when Goda did not know if he would renew his lease with the owner and that the proviso clause should be added. The conflict is not too material, and further, Sekulow's subsequent actions indicate that he is correct and Mr. Kelly is in error. Abraham Sekulow testified that when he observed the clause "provided further that the lessor still occupies the premises as a tenant of the owner", they were amazed; they found that Valet, Inc. was not the owner but was a tenant (App. 53, 80); they went at once to Washington to see Goda; they saw him; he admitted that Valet, Inc., was a tenant, and said he had a ten year lease; and Goda said after all, you are my friend, I will not do you any harm. My word is my bond, as long as I am here you can stay as long as you want; he added, I am putting this clause in the lease in the event something happens beyond my control (App. 81). Goda never denied this conversation. When asked about certain other covenants that had been omitted from this third lease Goda said he did not recall agreeing to same. Whereupon the plaintiffs showed him their copy of Lease No. 2 containing the clauses in question, and after some further discussion, Goda suggested that they cut out the clauses from Lease No. 2 which had been omitted and paste them on Lease No. 3 (App. 53, 82). This was done and relying upon Goda's assurance that the language in the renewal clause was just a precaution against something happening beyond his control, Abe Sekulow signed the lease which the plaintiffs now seek to reinstate, and the lease was delivered (App. 82).

During the spring and summer of 1944, when the third lease had about one year of its original term to run, Jack Sekulow told Goda they were ready to exercise their option and he tried to get it at a rental of less than \$1,000.00 per month, which was the maximum rental contained in the option, but not necessarily the minimum. At this time the plaintiff, Abe Sekulow, was absent in the armed forces.

At first Goda kept putting Jack Sekulow off by saying that there was plenty of time, and, as a result of this attitude, Jack Sekulow discontinued the conversations temporarily. Then in the summer of 1944, Goda told Jack Sekulow that he was receiving offers for the premises far in excess of the maximum renewal rental of \$1,000.00 per month. Sekulow told Goda he was not interested in hearing that as they had an option which he was ready to exercise at \$1,000.00 per month (App. 55).

Goda then said to Jack Sekulow that the option did not mean a thing, that the option was only good if 11th & F Street Valet, Inc. remained as a tenant and that he could easily arrange so that 11th & F Street Valet, Inc. does not remain a tenant (App. 55). He sought to justify this position by claiming that he was not making any money out of the transaction (App. 97), and while saying that it would be a "dirty trick" to do this, nevertheless that is what he intended to do (App. 55).

Goda said he would not let plaintiffs renew their option; that he would not renew with the owner (App. 98); that he did not make any money on the lease (App. 98); in July or August 1944, Goda said if Sekulow insisted on the renewal of his lease, that he would not renew his lease with the owner (App. 95, 98, 99, 100). This was a false representation, though plaintiffs then had no knowledge that it was untrue. Goda paid \$625.00 per month for the entire building; he had an option to renew at not to exceed \$650.00 per month; his option obligation with the plaintiffs was \$1,000.00 a month for the first floor; he rented the second floor at \$300.00 per month and the third for \$150.00 per

month (App. 104-105), and he occupied the fourth floor. This makes a total of \$1,450.00 receipts per month, together with free occupancy of the fourth floor, and he only paid \$650.00 per month for the entire building; the result was a profit of \$800 per month or \$9,600 a year; Goda kept these facts from the plaintiffs.

These conferences continued up to some time in September, 1944.

Under date of September 8, 1944 Francis J. Kelly, Esq., attorney for defendants, wrote plaintiffs a letter (App. 16), received by them about September 11, 1944 (App. 60) in which he enclosed a new form of lease, and stated in said letter

“ * * * this matter must be entirely consummated not later than September 15th”.

This lease is referred to as Lease No. 4, and is the one desired to be set aside. It is for a term of six years, commencing October 1, 1944, and provides for a total rent of \$98,550.00; of which \$6,300.00 was required upon the signing of the same; \$850.00 a month until July 1, 1945 (this was the expiration date of Lease No. 4 and plaintiffs had an absolute right to remain to that date at said rental); \$1,250.00 a month from July 1, 1945 to July 1, 1947 (under the option agreement this should be not in excess of \$1,000.00 a month), and from July 1, 1947 to September 30, 1950, at \$1,400.00 per month (under the option agreement in Lease No. 3, the maximum rental was \$1,000.00 per month to June 30, 1950) (App. 16, 56). This lease covered the same space as did the third lease.

Prior to the receipt of this letter, the plaintiffs had not agreed upon any such terms (App. 57, 70, 102). Here there is a conflict; Goda states that Jack Sekulow had previously agreed to a figure considerably higher than \$1,000.00, though not a definite figure. Later Goda stated they did agree upon the figures set out in the lease. Sekulow denies this and certainly his subsequent action supports Sekulow's statement. The day following the receipt of the letter, Jack

Sekulow went to see Goda; Goda said the letter was self-explanatory; that the lease must be signed by September 15th, (App. 57); Jack Sekulow then went to see his attorney, Gilbert J. Stern (App. 57, 83); Jack Sekulow told his attorney that his brother Abe Sekulow was in the service, that he did not know of the negotiations, that he expected to be out of the service in three or four weeks, and he would like a postponement (App. 57). Mr. Stern telephoned Mr. Kelly, but he would not agree to a postponement; he said Goda required that the lease be signed by September 15th (App. 57, 84).

Sekulow's attorney sought to ascertain the terms of the master lease by finding out whether same was recorded, but it was not recorded (App. 87). No other business location was available to the plaintiffs in the area of this store. They had built up a substantial business, and as there was no other space available, they feared that Goda had it within his power to in some manner juggle his lease or obtain a new one in another name, if he had not already done so, and further feared that failure to act by the time set forth in the ultimatum might result in the premises being leased to some innocent person for value (App. 59, 84); which might leave the plaintiffs with a law suit which would fail to adequately compensate them for the loss of this substantial business.

Accordingly, Jack Sekulow and his attorney kept the appointment on September 15, 1944, in Mr. Kelly's law office in Washington.

Mr. Stern started the meeting by stating that there were some matters he would like to discuss about the lease, Goda said that if there was any question about the amount of the rental contained in this fourth lease there was nothing to discuss, that unless Sekulow was prepared to sign at the rentals called for by this lease there could be no discussion (App. 58, 85). (It is significant that Goda did not say the rent had been agreed to by the parties.) Sekulow replied that if Goda put it that way he had no choice but to sign,

then Goda consented to listen to other points concerning the lease.

The plaintiffs then sought to be relieved of the burden of guaranteeing the rental of the second floor. This Goda refused. (App. 86). The plaintiffs then sought to include in the contract the right to sell ladies' handbags, which they had been selling for a long period of time with Goda's oral permission (App. 61, 62, 72, 86). To this Goda agreed. The plaintiffs then sought to examine the master lease. This Goda refused, in effect saying this was his private business (App. 85). The plaintiffs then asked that the fourth sub-lease and the master lease be recorded after the execution of the sub-lease. To this Goda agreed (App. 87). The plaintiffs then requested that the original lessor, the identity of whom was up to this point unknown to them, sign an acceptance on this sub-lease. This request the defendants refused (App. 85) but Mr. Kelly said that authority to sublet had already been procured by means of a separate letter and that defendants would consent to the attaching of same to the sub-lease to form a part thereof. The plaintiffs agreed to this, and upon seeing this letter they first learned the identity of the original lessor (App. 86).

The plaintiffs then paid to the defendants the bonus of \$6,300.00 as called for by this Lease No. 4 and signed the lease (App. 58), which is now sought to be set aside, and by the terms of which, in addition to the burden of guaranteeing the rent for the second floor, they are called upon to pay to the defendants \$26,000.00 more rent than provided for by the maximum rental under the renewal clause of Lease No. 3.

About a month after this, plaintiffs secured a copy of the recorded master lease and for the first time discovered that Goda had merely renewed his existing lease which disclosed that Henry Schaffert, Trustee, owned the building and he leased the entire building, four floors, to Goda, beginning October 1, 1940, for five years, at a rental of \$625.00 per

month, and Goda had an option to renew for five years at an annual rent of not less than \$7,500.00 nor more than \$7,800.00 (App. 22-25).

Back on December 26, 1940, Goda assigned his rights under the Schaffert lease to the defendant, 11th & F St. Valet, Inc.; (App. 63). Under date of September 6, 1944, the Valet, Inc., reassigned said lease to Goda (App. 63), and on the next day, September 7, 1944, Goda exercised his option to renew the Schaffert lease (App. 25). The result was that Valet, Inc., no longer continued within the strict option terms of the lease, "provided further, that the Lessor still occupies the premises as a tenant of the owner". Plaintiffs submit that this manipulation between the defendants worked a fraud upon the plaintiffs; that Goda's representation that if plaintiffs insisted upon renewing the lease agreement the corporation would not renew its agreement with the owner because he was not making money was false and fraudulent; his gross profit would be \$800.00 per month, or \$9,600.00 per year, under then existing option provision, together with free use of the fourth floor.

The fourth lease was of no benefit to plaintiffs, but was indeed costly. The rent provided for therein to June 30, 1950, was \$26,704.00 in excess of the rent provided for in the third lease under the option agreement to the same date; it required plaintiffs to obligate themselves for the rent of the second floor in the event it became vacant. It is true that the lease provided that plaintiffs could sell handbags, and that the third lease had no such provision; however, the plaintiffs had, in fact, been selling handbags for months with defendants' knowledge, consent and approval (App. 41, 85).

Upon securing the copy of the recorded master lease (App. 59, 88), the plaintiffs also for the first time discovered that Goda had exercised his renewal prior to the time of his having his attorney send the written ultimatum to the plaintiffs; and that at the very time of the ultimatum and the procurement by Goda of the execution of Lease No. 4,

he was already bound to the original lessor to remain as a tenant for a period of time several months beyond the term of the option of renewal provided for in Lease No. 3.

Accordingly, the plaintiffs subsequently, and within the time provided for by Lease No. 3, sent registered notices to both defendants (App. 32-35), notifying them of their intention to set aside Lease No. 4, and avoid release of Lease No. 3, and to exercise their option to renew said Lease No. 3. The defendants, failing to recognize these notifications, this action was brought by the plaintiffs to set aside Lease No. 4 and reinstate Lease No. 3, dated July 1, 1942, together with the rights and privileges enuring to their benefit under the renewal clause contained in said lease, as well as to seek a return of all monies paid by the plaintiffs to the defendants under the terms of Lease No. 4, in excess of their legal obligations under the lease which they seek to reinstate.

STATEMENT OF POINTS.

1. The utmost degree of good faith was required of defendants, as, prior to the actions complained of, there was the relationship of landlord and tenant existing between the defendants and the plaintiffs, yet the defendants deceived and mislead the plaintiffs.

2. The defendants were under the duty to exercise good faith, yet they consciously kept the plaintiffs in ignorance of the true facts as to the defendants rights to lease the property from the owner, and fraudulently took advantage of plaintiffs' ignorance and their necessities.

3. The defendants extorted the release of lease No. 3, and the execution of lease No. 4 by the plaintiffs, under circumstances constituting business duress.

4. The defendants falsely and fraudulently represented that under their master lease, they would make no money by renewing the lease with the plaintiffs, and falsely threatened they would not renew the master lease unless

plaintiffs cancelled their rights of renewal and made a new lease.

5. When defendant Goda exercised his renewal right on September 7, 1944, the plaintiffs, as sub-lessees, became fully entitled to their renewal.

6. The proviso that the plaintiffs had the right to renew provided "that the lessor still occupies the premises as a tenant of the owner", required the defendants to act in good faith to remain a tenant.

7. The defendants fraudulently concealed from the plaintiffs the terms of defendants master lease and the fact that they had already renewed the same, when they were threatening they would not renew unless plaintiffs agreed to a new lease at a higher and exorbitant rental.

8. The Court erred in finding: that the parties were dealing at arm's length, that there was no duress, threats of eviction or undue influence, nor what amounts to business compulsion, and that the plaintiffs voluntarily executed the release of Lease No. 3 and voluntarily executed Lease No. 4.

9. The Court erred in finding that the defendants were at liberty not to renew their option if they chose not to do so; in finding that the option provision did not create an absolute right on the part of the plaintiffs, and there was consideration for the execution of the release of Lease No. 3 and for the execution of Lease No. 4.

SUMMARY OF ARGUMENT.

Goda concealed facts and represented he was not making any money (he was in fact making about \$9,600.00 per year); he made the false representation with the intention of inducing plaintiffs to rely upon it; they did rely upon it and as a result of this and of defendants' representation that he would not renew the master lease, plaintiffs can-

celled the old lease and made a new lease providing for excessive rental in the sum of \$26,000.00 over their option rights. Defendants' acts constituted actual fraud.

It is not necessary for the plaintiffs to prove actual fraud—if they prove business duress, that is sufficient. There was business duress.

The defendants concealed from the plaintiffs their, defendants, rights under their lease with the owner; defendants, in effect, put a business gun to plaintiffs' head, and said, either cancel your renewal right and sign a new lease at higher rental, or else we will not renew, and you and your business will be on the street. You will have no home—for no space is available. Such acts constitute business duress and the plaintiffs are entitled to relief.

Defendants kept from the plaintiffs information as to defendants' rights with the owner, thereby keeping plaintiffs in ignorance of their actual legal right to secure a renewal, and as plaintiffs, when they cancelled the third lease and executed the fourth lease, were in ignorance of their right, their renunciation of their rights is voidable, and the third lease should be reinstated.

On September 15, 1944, at the time of the execution of the release of Lease No. 3, and the execution of Lease No. 4, the relationship of landlord and tenant existed between defendants and plaintiffs, and the utmost degree of good faith was required of Goda, who owned, controlled, operated and manipulated defendant Valet, Inc. Yet defendants concealed from plaintiffs the terms of their lease with the owner, and falsely and fraudulently represented they were not making money; and falsely represented that if plaintiffs insisted upon their renewal rights, that defendants would not renew their lease and that Valet, Inc. would not be a tenant of the owner, and would not renew with plaintiffs.

The option proviso, upon which Goda relies for his alleged right to see to it that Valet, Inc. did not continue as a tenant, required him to act in good faith to remain as

a tenant. He would not be liable if conditions beyond his control prevented him from continuing as a tenant. However, he could not manipulate the lease between himself and the corporation so as to prevent this.

On September 7, 1944, Goda exercised his renewal rights with the owners and as he owned and controlled Valet, Inc., and manipulated the leases between it and himself, the rights of defendant to occupy the premises to September 30, 1950 became vested, and Valet, Inc., did then occupy the premises. On September 15, 1944, when defendants forced plaintiffs to surrender their third lease with option rights, plaintiffs' right to renewal was effective, and they became fully entitled to their renewal; there was no consideration for the cancellation of the third lease and the making of the fourth lease.

A corporation cannot be used to justify wrong and to protect fraud. Valet, Inc. was a one man corporation and Goda cannot manipulate it to be or not to be a lessee under the master lease so as to defraud the plaintiffs and to unjustly enrich the defendant Goda.

A sealed instrument may be set aside for fraud or duress, and the consideration may be attacked in equity.

ARGUMENT.

1.

The Plaintiffs, as a result of Fraud, Executed the Release of the 3rd Lease, and Executed the 4th Lease, and Relief should be granted.

There is a definite trend to require a high degree of integrity on the part of man in dealing with his fellow man. We have the Federal Trade Commission and the laws under which it operates, and we have the Better Business Bureau. The underlying purpose of the Federal Trade Commission law and of the Better Business Bureau is that business should be transacted openly, fairly and without deception. When one party has knowledge of facts, and the other

does not, and the one who has knowledge misrepresents the facts, the old principle caveat emptor no longer applies.

This Court in *Smith Co. v. Low*, 57 App. D.C. 167; 18 F. (2) 817, held that statements of value, which generally are understood to be mere expressions of opinion, when, however, p. 169

“ ‘made under conditions which show that it was intended by one uttering it ‘to be treated as an immediate factor inducing action, and was made with knowledge that it would be accepted as a basis of action, instead of a mere element to be investigated before action, it becomes for all practical purposes a statement of fact.’ ”

In the instant case, Goda concealed from the plaintiffs his contractual rights with the landlord, he falsely stated he was not making money (he, without lifting his finger was making about \$9,600.00 yearly), and that if plaintiffs insisted upon a renewal, Valet, Inc. would not renew with the owner, and would then be under no obligation to renew and would not renew with the plaintiffs. Was not this an immediate factor in inducing plaintiffs to cancel their existing lease and option rights, and in blackjacking them into making a new lease providing for increased rentals of \$26,000.00, over and above their option rights?

As the Supreme Court has said, in a statement widely repeated:

“But state of mind is itself a fact, and may be a material fact, and false and fraudulent representations may be made about it”. *Seven Cases v. U.S.*, 239 U.S. 510, 517; 59-60 L.Ed. 411.

This Court in *Sovereign Pocohontas Co. v. Bond*, 74 App. D.C. 175; 120 F. (2) 39, held that where officers of a corporation, in an effort to induce extension of credit, stated a corporation was making money, when in fact it was not, the officers were personally liable in an action in deceit, and that the liability existed whether the officers knew the

statements to be false or whether they were made in reckless disregard of the truth.¹

The trial Court held there was no fraud—this however was not a factual finding, for as to the substantive facts there is no real dispute. We submit that the lower Court misapplied the law to the facts.

2.

The Plaintiffs, as a Result of Business Duress, Executed the Release of the 3rd Lease and Executed the 4th Lease, and Relief should be Granted.

The Court, in the Conclusions of Law, relies upon *Harts-ville Oil Mill v. U. S.*, 271 U.S. 43; 70 L. Ed. 822 (1926). There the facts were indeed different from those in the instant case. There the appellant contended that the Government's refusal to carry out the contracts would have resulted in failure of the scheme for the stabilization of price of cottonseed and its products, and the collapse of the business structure which had been reared upon the basis of the stabilized price and that great loss would have resulted to appellant. The Court pointed out that the proof failed to support such contentions. Mr. Justice Stone recognized that under proper circumstances, relief should be given and the second contract should be set aside and the first contract reinstated, for he said, p. 48:

“A difficulty encountered by the appellant at the outset is that this view is not supported by the findings

¹ There are many cases which hold that acts similar to those of the defendants are fraudulent; *George v. Ford*, 36 App. D. C. 315; *Browning v. National Capital Bank*, 13 App. D. C. 1; *Coan v. Consolidated Gas Co.*, 126 Md. 506, 95 At. 151; *Old Colony Trust Co. v. Dubuque L. & T. Co.*, 89 Fed. 794 (C.C.A., N. D. Iowa 1898); *Phila. Storage etc. Co. v. Kelly-Hew-Thompson Co.*, 64 Fed. (2) 834 (C.C.A. 8th 1933); *Falter v. U. S.*, 23 Fed. (2) 420 (C.C.A. 2d 1928); *Keeler v. Fred T. Ley & Co.*, 65 Fed. (2) 499 (C.C.A. 1st 1933); *Fernandina Shipbuilding & Dry Dock Co. v. Peters*, 283 F. 621 (D.C., S.D. Fla. 1922); *Rogers v. Va.-Carolina Chem. Co.*, 149 Fed. 1 (C.C.A. 3rd 1906); *Tysowski v. F. H. Smith Co.*, 35 App. D. C. 403; *Gross v. Stone*, 173 Md. 653, 197 Atl. 137; *Wilson v. Md. Life Ins. Co.*, 60 Md. 150; *Staleman et al. v. Schwartz*, 173 P. (2) 388 (C.C.A. 2d).

made. On its own theory of the case, appellant must prove the probable injury which it would have suffered from the threatened refusal of the Government to carry out its contract, and that fear of that loss was the effective cause of its executing the settlement contract. * * * it does not appear what the consequences to its own business and finances would have been."

The Court continued, p. 49:

"But a threat to break a contract does not in itself constitute duress. Before the coercive effect of the threatened action can be inferred, there must be evidence of some probable consequences of it to person or property for which the remedy afforded by the courts is inadequate".

In what may be referred to as a companion case to the Hartsville Case, the facts supported the allegations and the Court held for the plaintiff. In *Hazelhurst Oil Mill & Fertilizer Co. v. United States*, 42 F. (2) 331; 70 Ct. Cl. 334 (1930), there was a contract and a subsequent contract of settlement. Plaintiff alleged that the contract of settlement was void, having been obtained through duress. Defendant urged that plaintiff is precluded from recovery by *Hartsville Oil Mill v. United States*, *supra*; however the Court stated:

"But in this case the threat was made not simply to cancel the contract so far as future operations were concerned but to refuse to pay for the linters which had already been tagged and accepted—a course of action for which the government cannot present even the shadow of a legal right. * * * The findings show that if the plaintiff and the other mills had refused to accede to the demands of defendant's agents and they had carried out their threats, the result would have been a commercial crisis in the business of buying cotton seed and manufacturing various products therefrom. * * *

"If the prices of these products were not sustained by the government and all the mills were compelled to throw the accumulated products on the open market, values, as shown by the evidence, would have immediately collapsed, and the loss to plaintiff, as the findings

show, would have been around \$200,000—about the amount of its total capital and surplus.

“If the loss on the linters had been all that would have resulted from the government breaching its contract, it could be properly said that plaintiff had a complete remedy at law in its suit to recover the price agreed upon in the original contract. But this was only a small part of the loss, and for the other losses which would have been sustained as we have shown above, plaintiff had no legal remedy. It could not bring suit against the defendant to recover losses sustained by reason of the failure of the Food Administration to maintain the stabilization plan and for the depression in prices of all of the mill’s products. It had no remedy except upon the linters. Above all it had no remedy for its bankruptcy and the loss of its business. As the findings show, its damage would have been irreparable.” * * *

“We think these acts of the government officials constituted duress which would render the settlement void. If they did not, we are at a loss to know what would constitute duress outside of physical compulsion. In this view we think we are fully supported by the authorities. * * *

The plaintiffs come squarely within the principle stated by Mr. Justice Stone in *Hartsville Oil Mill v. United States*, *supra*, and within the principles of the immediate foregoing case. No other space was available and defendants were threatening to put them on the street—the total destruction of the business conducted in this store was threatened.

Other cases in point are *Maxwell v. Griswold*, 10 How. 242; 13 L. Ed. 405; *Swift Co. v. U. S.*, 111 U.S. 22; 28 L. Ed. 341; *Robertson v. Frank Bros. Co.*, 132 U.S. 17; 33 L. Ed. 236; *Farmers & Guinness Colton Oil Co. v. United States*, 76 Ct. Cl. 294; *Atcheson, Topeka & Santa Fe Ry. Co. v. O’Connor*, 223 U.S. 280; 56 L. Ed. 436. In the last case, Mr. Justice Holmes stated, p. 286:

“As appears from the decision below, the plaintiff could have had no certainty of ultimate success, and we are of the opinion that it was not called upon to take the risk of having its contracts disputed and its business

injured, and of finding the tax more or less nearly doubled in case it finally had to pay. In other words, we are of opinion that the payment was made under duress.”

Were the Sekulow Brothers called upon to take the risk of having their contracts disputed, of being ousted and not only their business injured, but completely and fully lost? Were not the cancellation of Lease No. 3 and the making of Lease No. 4, procured under duress? We so submit.

When obligation is assumed upon apprehension of being stopped in one's business, relief may be obtained.²

A sealed instrument may be set aside for fraud or duress, see *Nelson v. Chesapeake Const. Co.*, 159 Md. 20; 149 Atl. 442 (1930).

The trial Court held there was no duress—this, however, we submit, was a misapplication of the law to the facts.

3.

Fiduciary Relationship; Defendants were Required to Act in Utmost Good Faith.

While the relationship between landlord and tenant is ordinarily not of a fiduciary character (*Robinson v. Eagle-Picher Co.*, 132 Kan. 860, 297 P. 697 (1931) 75 A.L.R. 840), this doctrine applies only to the ordinary case where the parties deal at arm's length upon the basis of information equally accessible to the two.

Wherever either of the parties takes it upon himself to make representations to affect the relationship or wherever either of the parties is in possession of information of an extraordinary character affecting negotiations between them, the relationship is regarded as a fiduciary one.

Risk v. Risher, 19 So. (2nd) 484, 486, 487 (1, 2, 3) (1944).

Gale v. McCullough, 118 Md. 287, 293, 84 At. 469.

² *Young v. Hoagland*, 212 Cal. 426; 298 P. 996 (1931); *Harris v. Cary*, 112 Va. 362; 71 S. E. 551 (1911); *Hill v. District of Columbia*, 7 Mackey (D.C.) 481; 79 A.L.R. 655, 657.

In the last mentioned case, setting forth the common law of Maryland, which is ordinarily considered as applicable to the District of Columbia, the Court said:

“The relation of landlord and tenant, in the estimation of a Court of Equity, so far partakes of a fiduciary character, that in all transactions between the parties in reference to the property, the utmost good faith is required. 1st *Stories Eq. Secs.* 218, 323; *Bonnet v. Sadler*, 14 *Vezey*, 526.”

On September 15, 1944, the relation of landlord and tenant already existed. Under these circumstances the utmost degree of good faith was required of Goda. *Robins v. Hope*, 57 Cal. 493 (1881). There the Court, speaking of confidential relation, p. 497, stated:

“It is a peculiar relation which undoubtedly exists between client and attorney, principal and agent, principal and surety, *landlord and tenant* * * *. (Italics supplied). In these and the like cases the law, in order to prevent undue advantage from the unlimited confidence, affection, or sense of duty which the relationship naturally creates, requires the utmost degree of good faith (*uberrima fides*) in all transactions between the parties”.

To the same effect, *Beaumont v. Boultree*, 5 *Vezey*, Jr.’s Reports, 485.

We have seen that defendants were under the obligation to exercise the utmost good faith; yet what did they do? They misstated the facts, they concealed facts, and they took advantage of plaintiffs’ necessities and of their ignorance. Plaintiffs advised defendants that they wanted to renew under the option provision of Lease No. 3; defendant said no, I will not renew, I am not making any money. That was false, defendants then were paying rent of \$625.00 a month and were then collecting \$850.00 a month from plaintiffs, \$300.00 a month for the second floor, \$150.00 a month for the third floor, and were using the 4th floor. In other words, they were then making \$675.00 a month gross profit.

Plaintiffs asked to see defendants' lease with the owner and the defendants refused—they concealed from the plaintiffs the rate of rental they were then paying and their option right to renew at \$650.00 a month for 5 additional years. Had plaintiffs renewed under their option agreement of \$1,000.00 a month, defendants' monthly gross profit would have been \$800.00, or \$9,600.00 a year. Had these misrepresentations and concealments not been made, plaintiffs and any other reasonable man would have known that defendants would renew the lease with the owner. As Al Smith might have said, Goda would not try to murder Santa Claus. Without these facts, plaintiffs were left to speculate—perhaps the defendants had to negotiate a new lease with the owner and were being held up and had to pay a substantially higher rent than they had been paying; perhaps plaintiffs' new rent in proportion to defendants' new rent might be reasonable from defendants' position. Bearing these things in mind and knowing there was no available space, the plaintiffs cancelled their old lease and made the new lease and have made all payments thereunder. Because of the fraud and concealment, plaintiffs should be given relief. Lease No. 3, with its renewal rights, should be reinstated, Lease No. 4, should be cancelled, and the excess rent paid over that required by Lease No. 3, should be returned.

4.

The Proviso Relied upon by Goda Required him to Act in Good Faith to Remain a Tenant

The lease is construed strictly against Goda.

The lease is the grant of Valet, Inc., further, defendants alone, were represented by counsel at the time of the execution of the lease of July 1, 1942 (third lease).

32 Am. Jur., p. 809:

“As a general rule, in construing provisions relating to renewals where there is any uncertainty, the tenant is favored, and not the landlord, because the latter,

having the power of stipulating in his own favor, has neglected to do so, and also upon the principle that every man's grant is to be taken most strongly against himself".

In *Texas Co. v. Adelman*, 186 Okl. 663; 99 P. (2d) 874, (1939); 127 A.L.R. 945, it is stated:

"This lease was prepared by, and on a form of, The Texas Company, and any doubt as to the meaning of such paragraph should be interpreted most strongly against the party who caused the uncertainty to exist".

In *Stetler v. North Branch Tr. Co.*, 258 Pa. 299; 101 At. 980 (1917), the Court stated:

" * * * any uncertainty as to the meaning of a clause in a lease is to be determined in favor of the lessee".

The renewal proviso must be construed in harmony with the contract as a whole—it must not be stricken from the contract; it carries an implied covenant on the part of the lessor to endeavor to remain a tenant and to renew, if within its power, if the plaintiffs elect to renew.

Lease No. 1 was for six months and provided for the right of renewal for four and one-half years; Lease No. 2 was for a year and provided for the right of renewal for four years. When plaintiffs observed the proviso clause in Lease No. 3 they saw Goda and were assured that the provision was only to protect him in the event he could not renew—that they had nothing to fear—they could remain in if they wished. It is clear the plaintiffs wanted a real option—not a weasel word option—it is clear they understood they had a real option.

In *McDonald v. Karpeles*, 61 Pa. Sup. Ct. 496 (1915), the tenant had "first privilege to rent the building for a further term * * *". The owner contended that the option merely gave a right above others, but that the owner could elect not to lease; the Court stated:

"It will be observed, too, that by the proviso he is to exercise the privilege three months before the expiration of two years. What privilege was he to exercise? Certainly the right to the extended term. This could hardly be called a privilege to be exercised if it were at the option of the landlord to increase the rent to an amount which would be prohibitive to the tenant".

To the exact same effect is *Stetler v. North Branch T. Co.*, *supra*. There the Court stated:

"But the Court below well says, 'if the plaintiffs' theory as to the meaning of the paragraph is to be accepted, it would, so far as the lessee is concerned, become wholly meaningless, and might as well have been omitted.' We are not to suppose that the parties intended such a result".

At page 301 the Court also stated:

"It was of no possible use to make provision merely that one party should enjoy a certain right, if the other party should consent thereto; the settled rule of construction is, that any uncertainty as to the meaning of a clause in a lease is to be determined in favor of lessee".

To the same effect is *Streicher v. Heimbinge*, 205 Cal. 675; 272 P. 290 (1928), there the Court stated:

"Perhaps the strongest reason that may be urged that it was never intended that this be a condition precedent is the fact that this provision is and of itself would give right of renewal under the lease * * *".³

³ See *Sharp v. Williams*, 141 Fla. 1; 192 So. 476 (1939); *Texas Co. v. Adelman, et al.*, 186 Okl. 663; 99 P. (2d) 874 (1939); *E. I. DuPont v. Schottman*, 218 F. 353 (C.C.A. 2nd 1914); cert. denied 235 U.S. 705; *American Fuel Co. v. Interstate Agency*, 261 F. 120 (C.C.A. 9th 1919); *Rumsey v. Livers*, 112 Md. 546; 77 At. 295 (1910); 1 Restatement "Contracts", Sec. 260, 261; *Bellingham Securities Syndicate v. Bellingham Coal Mines*, 13 Wash. (2d) 370; 125 P. (2d) 668 (1942); *Jessup & Moore Paper Co. v. Piper*, 133 F. 108 (C.C.A.) E.D. Pa. 1902; *Cook v. Jones*, 96 Ky. 283; 28 S.W. 960 (1894).

In *Hotel Allen Co. v. Allen's Estate, supra*, the Court stated:

"The contract should not be construed strictly and literally. The purpose of the condition of decedent's lease limiting his right of renewal upon a renewal of the hotel lease was for the protection of the Hotel Company, and to impose upon it the obligation to renew for decedent, if it was then in a situation to grant the same, and to relieve it therefrom in the event it was not in position to grant the extension".

The proviso must be construed so as to make the Sekulow option good, rather than to make it meaningless. *Jacobson v. Sullivan*, 152 Mass. 480; 25 N.E. 973 (1890); *Boehmer Coal Co. v. Burton Coal Co.*, 2 F. (2d) 256 (C.C.A. 8th 1924); *American Sugar Co. v. Newman*, 284 F. 835; *Adamson v. Alexander Milburn Co.*, 275 F. 148 (C.C.A. 2nd 1921); *Schoellkopf v. Coatsworth*, 166 N.Y. 77; 59 N.E. 710 (1901); *Risk v. Risher*, 19 So. (2) 484, 486, 487 (1, 2, 3) (1944).

The plaintiffs had a real option; they did not merely have an option at the option of defendants.

In the Conclusions of Law (App. 43) the Court stated that as there was no duty on the part of the defendants to renew there was consideration for the execution of the fourth lease. We submit that the Court was in error in his premise and was in like error in his conclusion. *Shriner v. Craft*, 166 Ala. 146; 51 So. 884.

5.

Plaintiffs Right to Option became effective on September 7, 1944, when Goda renewed the Master Lease.

When Goda renewed the master lease, the option right in the Sekulow lease became effective as plaintiffs had already informed defendants of their desire to renew.

Evans v. Walshe, 2 Sch. & Lef. 519. There, the lessee (sub-lessor) obtained a new lease—not a renewal—at a

substantially higher rent, yet the Court held he was bound to give a renewal to his tenant.

To the same effect are: *Hansauer v. Dahlman*, 45 N.Y.S. 1088, aff'd. 163 N.Y.S. 567; *Horn & Hardart Co. v. 115 E. 14th St. Co.*, 7 N.Y.S. (2d) 688; *Winestine, etc. v. Rose Cloak & Suit Co., et al.*, 93 Conn. 633; 107 At. 500 (1919); *Brummitt Tire Co. v. Sinclair Refining Co.*, 18 Tenn. App. 270; 75 S.W. (2d) 1022 (1934); *Hotel Allen Co. v. Allen's Estate*, 117 Minn. 333; 135 N.W. 812 (1912); *Eccl. Coms. v. Treemer* (1893), 1 Ch. 166.

Indeed, it is immaterial whether Goda merely renewed the lease with his landlord, as he did, or whether he obtained a new lease. In either event he is bound to renew upon request from the plaintiffs.

In *Hotel Allen Co. v. Allen*, *supra*, the Court stated:

"And in measuring the rights and obligations of the parties it would seem immaterial whether there was in form and letter a renewal of the hotel lease, or an entirely new one. It is sufficient that the Hotel Company was still the lessee of the property and in position to grant the extension to decedent."

Also, see 127 A.L.R., p. 953, Annotation following *Texas Co. v. Adelman*, *supra*.

As plaintiffs had the unqualified right to renew there was no consideration moving to them for the cancellation of the third lease and the assuming of the more onerous fourth lease.

6.

A corporation cannot be used as a cloak to perpetrate or protect fraud.

In the opinion, the Court stated (App. 37) that a corporation is a person and its ownership is a nonconductor that makes it impossible to attribute an interest in its property to its members. We are not quite clear as to the significance of this statement. We do bear in mind that leases 1, 2 and 3 were between the plaintiffs and defendant Valet, Inc., that

the threats not to renew and that the ultimatum to sign a new lease or get out were made and delivered by Goda. Goda was president of the one man corporation which was owned and controlled by him. We hardly believe that the Court meant to hold that as they are separate legal entities, that Goda could manipulate the corporation to bring about a fraud and that either or both can escape liability. If this be the intention of the statement of the Trial Court, it is fully answered by this Court in *Callas v. Independent Taxi Owners Assn.*, 62 App. D. C. 212; 66 F(2d) 192, where this Court stated, p. 213:

“If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons”.

Attention is invited to the cases referred to immediately following the foregoing quotation.⁴

CONCLUSION.

We respectfully submit that defendants procured the release of Lease No. 3 and the execution of Lease No. 4 through fraud, and by business duress; further, that there existed a fiduciary relationship between plaintiffs and defendants which required defendants to act in the utmost good faith, and that defendants failed so to do; that the option provision required defendants to endeavor to remain a tenant so as to carry out their obligation to renew; that plaintiffs' right to the option became effective upon defendants' renewal of the master lease on September 7, 1944, and finally, that defendant Goda cannot manipulate his one man corporation to perpetrate a fraud.

It is respectfully submitted that the relief prayed for should be granted, and the judgment should be reversed.

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⁴ *Pott v. Schmucker*, 84 Md. 535, 552-553.

APPENDIX

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IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9432.

JACK SEKULOW and ABRAHAM SEKULOW, a partnership, trading as SEKULOW BROTHERS, *Appellants*,

v.

11TH & F STREET VALET, INC., a corporation of the State of Delaware, and GEORGE GODA, *Appellees*.

Appeal from the District Court of the United States for the District of Columbia.

JOINT APPENDIX

I.

PLEADINGS, DOCKET ENTRIES AND OTHER PAPERS

1

Filed May 3 1945

In the District Court of the United States
for the District of Columbia

Civil Action No. 28798

JACK SEKULOW and ABRAHAM SEKULOW, a partnership, trading as SEKULOW BROTHERS, 126 W. Baltimore Street, Baltimore, Maryland, *Plaintiffs*,

v.

11TH & F ST. VALET, INC., a corporation of the State of Delaware, 604 11th Street, N. W., Washington, D. C., and GEORGE GODA, 604 11th Street, N. W., Washington, D. C., *Defendants*.

Complaint to Cancel Lease; to Reinstate Prior Lease; and to Recover Money Paid Under Duress.

1. That the plaintiffs, Jack Sekulow and Abraham Sekulow, a partnership, trading as Sekulow Brothers, are citizens of the United States and residents of the State of Maryland, and are engaged in business, among other places, in the District of Columbia; the defendant, 11th & F St. Valet, Inc., is a corporation, incorporated under the laws of the State of Delaware, doing business in the District of Columbia; and the defendant, George Goda, is a resident of the District of Columbia. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).

2. That in the latter part of 1940, the plaintiffs, who then operated one store in the District of Columbia, sought a second location, and, seeing a "For Rent" sign in front of the premises 604 11th Street, N. W., Washington, D. C., on which no name of the lessor was indicated, entered the said premises to make inquiry. That in the first floor of the said premises they were greeted by the defendant, George Goda,

2 who showed them the second floor of the premises, told them his terms and conditions for renting the said second floor of the premises, and subsequently, the parties having reached an agreement, the said Goda presented the plaintiffs with an already prepared lease covering the said second floor. That upon seeing this said lease, the plaintiffs inquired of the said George Goda as to why the lessor was named as 11th & F St. Valet, Inc., rather than George Goda, and he informed them that he conducted his affairs and owned the building in that corporate name, which was the same corporate name appearing on the front electric sign of his valet shop on the first floor, and he further informed the plaintiffs that he was the corporation. That thereupon, the plaintiffs, relying upon said representations, joined in executing the lease, which was dated January, 1941, and which provided for a flat rental, plus a percentage on certain of the gross business done by them, which said lease is attached hereto as plaintiffs' Exhibit "A". The plaintiffs took possession of said second floor on, to-wit, February 1, 1941, and occupied the same as tenants under said lease. The plaintiffs regularly paid rent therefor, according to the terms of said lease to the defendant, 11th & F St. Valet, Inc.; that said payments were made by check and said checks were endorsed by the defendant Goda "For deposit—11th & F St. Valet, Inc."

3. That shortly before July 1, 1941, the plaintiffs advised said Goda that they would like to surrender the second floor and to rent the first floor, and inquired of the said George Goda as to whether he would be interested, and the said George Goda informed them that he would rent the first floor to them and secure another tenant for the second floor, providing the plaintiffs would loan him the sum of Fifteen Hundred Dollars (\$1,500.00) with which he could pay off his obligations and certain notes on the equipment of his valet shop. Accordingly, the plaintiffs loaned him the said Fifteen Hundred Dollars (\$1,500.00), for which he gave them a promissory note, without interest, signed "George

3 Goda''. Thereupon, the parties having reached an agreement as to the terms of the lease, the said George Goda again presented an already prepared lease to the plaintiffs, which they believe was dated July 1, 1941, and in which the lessor was again named as 11th & F St. Valet, Inc., for the first floor of the said premises, at a rental based on eighteen percent (18%) of their gross business at this location, against which said percentage they were to pay a flat minimum guaranteed rental of Five Hundred Dollars (\$500.00) per month. The parties executed said lease, their copy of which they cannot now locate, and under said lease the plaintiffs occupied the first floor of the said premises until July 1, 1942, having given up possession of the second floor.

4. That shortly before July 1, 1942, the plaintiffs, who then still occupied the first floor of the said premises, asked the said George Goda to give them a lease based on a flat rental rather than on a percentage basis, covering the same first floor of the said premises, and when informed by him as to the amount of the rental he desired, they requested a five year option of renewal as a condition to entering into this said new lease, and the parties did agree upon the rental and upon the five year option.

5. That thereupon the said George Goda presented them an already prepared lease for the said first floor of the premises, dated July 1, 1942, in which said lease 11th & F St. Valet, Inc., was again named as lessor, and which said lease provided for a flat rental of Seven Hundred and Fifty Dollars (\$750.00) per month from July 1, 1942 to June 30, 1943, Eight Hundred Dollars (\$800.00) per month from July 1, 1943 to June 30, 1944, Eight Hundred and Fifty Dollars (\$850.00) per month from July 1, 1944 to June 30, 1945, and an option in favor of the plaintiffs to renew the said lease for an additional term of five years, commencing July 1, 1945, at a rental not to exceed One Thousand Dollars (\$1,000.00) per month, and that the parties did execute and deliver copies of said lease. A copy thereof is attached hereto as plaintiffs' Exhibit "B".

4 6. That shortly after the execution of the last-mentioned lease the plaintiffs noticed for the first time the exact wordage of the aforesaid option to renew, and thereby received the first indication that they were dealing with a tenant and not the owner of the said premises, and that shortly thereafter, upon their questioning the said George Goda about the said wordage of the option, the said George Goda for the first time stated that his corporation was lessee of the entire building and not the owner of same. That the plaintiffs thus discovered that the statements previously made by the defendant Goda that the Corporation owned the building were false. That during the same conversation in which this statement was made, the plaintiffs requested him to secure for them some sort of a paper writing by which the landlord would acknowledge their rights as sub-tenants, but that the said George Goda refused to disclose the name of the landlord or to secure such a paper writing in favor of the plaintiffs, but assured them that they had no cause to be apprehensive, guaranteeing that they would have possession as long as they desired to remain. That plaintiffs continued their occupancy as tenants under said lease and paid rent for the same; and as was done under the aforesaid prior leases, the checks for said rent were made payable to the defendant, 11th & F St. Valet, Inc., and were endorsed by the defendant, Goda, "For deposit—11th & F St. Valet, Inc."

7. That during and about the months of May and June, 1944, due to the fact that the amount of the monthly rental contained in the option to renew the then existing lease was not fixed, other than the agreement that it would not exceed One Thousand Dollars (\$1,000.00) per month, Jack Sekulow, one of the plaintiffs (the other being then in the armed forces), instituted conversations with the said George Goda with a view to fixing the monthly rental for the additional five year term, as aforesaid, in an amount not to exceed One Thousand Dollars (\$1,000.00) per month, but that the said George Goda told him there was ample time to discuss

5 this matter in the future and declined to negotiate
as to the amount of the rental, and as a result conversations with reference to the renewal of this lease ceased until about the end of August, 1944.

8. That sometime during the latter part of August, and continuing into the early part of September, 1944, the said George Goda, in several conversations with the said Jack Sekulow, stated that he had an opportunity to rent the premises occupied by the plaintiffs at a very much higher rental than One Thousand Dollars (\$1,000.00) per month; in the early part of September the defendant Goda again stated he had a higher offer than One Thousand Dollars (\$1,000.00) per month, whereupon the plaintiff, Jack Sekulow, stated we have an option, but said Goda refused to discuss the renewal option of the plaintiffs, but told said plaintiff that he had negotiated a new lease with his landlord in a name other than that of his Corporation, the said 11th & F St. Valet, Inc., and that the option on the part of the plaintiffs to renew the said lease did not therefore mean anything.

9. That on September 11, 1944, the plaintiffs received a letter from Francis J. Kelly, attorney for the said George Goda, dated September 8, 1944, a copy of which marked Exhibit "C" is hereto attached and made a part hereof, in which was enclosed a new lease for the first floor of the said premises, in which said lease the lessor for the first time was named as George Goda, and which said letter gave the plaintiffs until September 15, 1944, to execute the newly proffered lease which contained a much higher rental than One Thousand Dollars (\$1,000.00) per month, and to execute a release of the old lease, dated July 1, 1942. That on or about September 12, 1944, the said Jack Sekulow went to Washington, D. C., to see the said George Goda concerning the said letter and the said proffered lease, then under the belief that the said George Goda had in fact obtained a new lease in his own name to replace the supposed lease between his Corporation and the landlord, but again

6 the said George Goda told this plaintiff that the option to renew was now meaningless, adding that he had had this in mind when the then existing lease between the parties was drawn and that the letter from Mr. Kelly as to his position spoke for itself and was final. That on September 14, 1944, the plaintiffs instructed their attorney, Gilbert J. Stern, of Baltimore, Maryland, to seek an extension of time in which to act on the newly proffered lease, but that he was unable to obtain any extension of time, and a meeting was had between the parties to this cause and their respective attorneys on September 15, 1944, in Washington, D. C., at the office of Francis J. Kelly, Esquire, attorney for the said George Goda.

10. That on the said September 15, 1944, the said George Goda refused to discuss any rental other than that set forth in the proffered lease, a copy of which is attached hereto as plaintiffs' Exhibit "D"; said Goda was requested to exhibit his alleged new lease with his landlord, and he refused, but did agree to record the lease between himself and the plaintiffs dated September 15, 1944, as well as the new lease between himself and his landlord. That the plaintiffs refused, through their attorney, in the presence of all parties concerned, to execute the said new lease unless the landlord would acknowledge his acceptance on same. The said George Goda refused this request on the ground that he did not want his landlord to be familiar with the terms of this sub-lease, but he presented, as a counter offer, an already prepared signed letter from the landlord acknowledging this sub-lease, without referring to the rental, and agreed that this letter should be attached to the new lease between the said George Goda and the plaintiffs, and should constitute a part thereof. That the plaintiffs then objected to the provision in this said lease by which they would be required to assume the sub-tenancy, under certain circumstances, of the second floor, for which they then had and now have no use, but that the said George Goda gave an ultimatum that this provision, as well

7 as the provisions as to the amount of the rental, would have to be accepted, or he would refuse to negotiate further, and he then renewed his threats to rent these premises for a higher price to another tenant immediately, commencing as of the end of the then current term of the then existing lease between 11th & F St. Valet, Inc., and the plaintiffs; and also demanded that a mutual release of rights under the lease of July 1, 1942, be executed.

11. That, confronted with the foregoing duress, concealments, demands, threat of eviction, and resultant destruction and loss of plaintiffs' business, and also due to the fact that, to the best of their knowledge, no other space was available in said locality, the plaintiff, Jack Sekulow, for himself and for his co-plaintiff, on to-wit, September 15, 1944, involuntarily executed the lease, Exhibit "D", and the defendant Goda likewise executed said lease, and copies were delivered to the parties; and the said parties executed a mutual release of rights under the contract of July 1, 1942.

12. That thereafter, some time after September 20, 1944, the plaintiffs secured, along with the recorded copy of the said lease of September 15, 1944, between them and the said George Goda, a copy of the purported new lease between the said George Goda and his landlord, both of which said leases had been so recorded by the defendant, George Goda, in compliance with the heretofore mentioned agreement to so record the said leases; and thereby for the first time the plaintiffs discovered that the aforementioned statements by the said George Goda, relative to his having secured a new lease with his landlord, were in fact false; that the lease by which the said George Goda held tenancy to the aforesaid premises was actually dated August 29, 1940, was in fact between himself, George Goda, and the landlord, and was not, and had never been, in the name of 11th & F St. Valet, Inc. as tenant; and the said lease had attached thereto a letter on the letterhead of Henry Schaffert,

8 dated September 7, 1944, and accepted by the said Henry Schaffert, Trustee, whereby the said George Goda merely renewed an option contained in said lease for an additional period of five years commencing October 1, 1945; a copy of said lease with said letter attached thereto is attached hereto as plaintiffs' Exhibit "E". The lease, as extended, provided for an agreed rental of Six Hundred and Fifty Dollars (\$650.00) per month for the entire four floors of the said premises, the first three floors of which the said George Goda sub-rents to three different tenants, and the fourth floor of which he occupies as his office and living quarters.

13. That the plaintiffs, pursuant to said new lease, were compelled to pay to the said George Goda the sum of Six Thousand Three Hundred Dollars (\$6,300.00) at the time of the signing of the lease under date of September 15, 1944, and were compelled to agree to pay Two Hundred and Fifty Dollars (\$250.00) per month more than the agreed maximum rental of One Thousand Dollars (\$1,000.00) per month contained in their rental option in the lease marked plaintiffs' Exhibit "B", for the term from July 1, 1945 to July 1, 1947, and Four Hundred Dollars (\$400.00) more per month for the term from July 1, 1947, to September 30, 1950, all in addition to the aforesaid payment of Six Thousand Three Hundred Dollars (\$6,300.00), and in addition, were compelled to agree to accept tenancy of the second floor of these premises for which they had and have no use, if same should become vacant, for the further additional rent of Three Hundred Dollars (\$300.00) per month, all of which aforesaid excess payments were made or agreed to be made as the result of the fraud, duress, concealments, misrepresentations, demands and threats of the defendants and in order to prevent irreparable loss and damage to their business.

14. That after ascertaining the foregoing facts, the plaintiffs, by letters dated March 12, 1945, notified both defendants that they, the plaintiffs, elected to avoid the lease of

September 15, 1944, and they notified both defendants that they, the plaintiffs, exercised their option to renew the lease of July 1, 1942, copies of which said letters are attached hereto as plaintiffs' Exhibits "F" and "G".

15. That the defendant, George Goda, controls, directs and dominates the defendant, 11th & F St. Valet, Inc.; that he has used said defendant, 11th & F St. Valet, Inc., as an instrumentality and a sham by which to perpetrate fraud and injustice on the plaintiffs, and to procure the involuntary execution of the said lease of September 15, 1944, the payment of the aforesaid sum of Six Thousand Three Hundred Dollars (\$6,300.00), and the release of rights under said lease of July 1, 1942; that as aforestated, the rent of the said premises from January, 1941, to September 15, 1944, was regularly paid to the defendant, 11th & F St. Valet, Inc.; that the defendant, George Goda, received the entire benefits of said rentals and he is estopped from asserting any separate identity between himself and the defendant, 11th & F St. Valet, Inc.; and is estopped from denying the validity of the lease of July 1, 1942; that all accrued rent on said lease agreement has been paid.

WHEREFORE, the premises considered, plaintiffs pray:

1. That process be issued against the defendants and each of them, requiring them to appear and answer the exigencies of this Complaint.

2. That the lease of September 15, 1944, be declared void and cancelled.

3. That judgment be entered against the defendants jointly and severally for the sum of Six Thousand Three Hundred Dollars (\$6,300.00), together with interest at six percent from September 15, 1944, together with such additional sums as the plaintiffs may pay to the defendants or either of them under the purported lease of September 15, 1944.

4. That the lease of July 1, 1942, be declared to be in full force and effect, that the attempted release

thereunder of September 15, 1944, be declared void and be set aside, and that the option to renew the same be declared valid.

5. And for such other and further relief as to the Court may seem just and proper.

JACK SEKULOW
ABRAHAM SEKULOW,
a partnership, trading as Sekulow
Brothers. 126 W. Baltimore Street
Baltimore, Md.

FRANCIS W. HILL, JR.
A. P. CRENSHAW, III
537 Woodward Building
Attorneys for Plaintiffs.

11

Filed May 3 - 1945

Exhibit "A"**AGREEMENT**

This lease, made this day of January, 1941 between 11th & F St. Valet, Inc., hereinafter called the lessor, and Jack Sekulow and Abe Sekulow, trading as Sekulow Bros., a partnership, 205 N. Liberty Street, Baltimore, Maryland, hereinafter called the Lessees, witnesseth:

That the Lessor has agreed to let and hereby does let unto the Lessees, and the Lessees do hereby take and hire from the Lessor, premises known as No. 604 - 11th Street, N. W., Washington, D. C., of which premises the said Lessees shall have the right to occupy the entire second floor, to be used as a women's hat shop, for the term of Six months to commence on February 1, 1941.

The Lessees further agree to pay to the Lessor a guaranteed rental of One Hundred Fifty Dollars (\$150.00) per month, payable in advance on the day of each month.

In addition, the Lessees agree to pay to the Lessor Ten Per Cent (10%) of the gross receipts of said business which are in excess of Nine Thousand Dollars (\$9,000.) for the six month period beginning February 1, 1941 and ending June 30, 1941.

The Lessees further agree that for the purpose of ascertaining the amount payable as rent for the six month period above mentioned, they will keep at the premises herein demised, books which shall show daily sales and services made by the Lessees in, on or from the demised premises and further agree to deliver to the Lessor monthly statements of the total sales and services, and at the election of the Lessor, to give to the Lessor access to such books, accounts, records and reports of receipts kept in or upon the premises herein demised as show the daily receipts in such business by Lessees and to permit Lessor to have an audit made thereof by accountants appointed by Lessor. If such audit reveals error as result of which the Lessor has been paid less than the amount to which it is entitled, then the expense of such audit shall be borne by the Lessees, otherwise it will be borne by the Lessor.

The Lessee shall have the option or privilege of renewing this lease for an additional term of Four and one-half years beyond the term described herein, upon thirty-days written notice to the Lessor before the expiration of this lease. In the event the Lessees exercise their option the renewal lease shall contain a guaranteed rent of \$200.00 per month and, in addition, the Lessees are to pay to the Lessor 10% of the gross receipts of said business which are in excess of Eighteen Thousand Dollars per year. The amount due to the Lessor is to be determined at the expiration of each year beginning one year from the commencement of the renewal term. The same conditions will apply to the renewal lease as are contained in this lease.

The Lessor hereby agrees to furnish heat and light for the premises herein demised, and hot water, electric cur-

rent and air conditioning, and to service and keep same in good condition and repair.

The Lessee hereby agrees to keep the glass of the windows and all internal parts of the said premises in repair, and so leave the same at the end or sooner expiration of the said term.

If the premises rented herein shall be destroyed or rendered untenable by fire or by other unavoidable casualty, the tenancy hereby created shall be thereby terminated, and all liability for rent hereunder shall cease upon payment proportionately to the day of fire or unavoidable accident.

In Witness Whereof, the parties hereto set their hands and seals the day and year first written above.

11th & F St. Valet, Inc.

/s/ By GEORGE GODA, *Pres.*
Lessor.

/s/ JACK SEKULOW

/s/ ABE SEKULOW

Jack Sekulow and Abe Sekulow,
Lessees.

/s/ Thomas J. Flynn
Witness

13

Filed May 3 - 1945

Exhibit "B"

AGREEMENT

This lease, made this 1st day of July, 1942 between 11th and F St. Valet, Inc., hereinafter called the Lessor, and Jack Sekulow and Abe Sekulow, trading as Sekulow Bros., a partnership, 17 Hopkins Place, Baltimore, Maryland, hereinafter called the Lessees, witnesseth:

That the Lessor has agreed to let and hereby does let unto the Lessees, and the Lessees do hereby take and hire from the Lessor, premises known as No. 604 - 11th Street, N. W., Washington, D. C., of which premises, the said Les-

sees shall have the right to occupy the entire first floor and basement, to be used as a women's hat shop, for the term of three years to commence on July 1, 1942. The Lessees are to have the exclusive use of the two front windows on the first floor for millinery display only. No other signs or displays of other tenants are to be used in the first floor windows, or on street door. The Lessees shall have the option to renew this lease for a term of five years at a monthly rental not to exceed One Thousand Dollars (\$1,000.00) per month, the exact terms to be agreed upon between the parties, provided they give the Lessor thirty days written notice of their intention to exercise this option and provided further that the Lessor still occupies the premises as a tenant of the owner.

The Lessees agree to pay the Lessor Seven Hundred Fifty Dollars (\$750.00) per month for the term July 1, 1942 to June 30, 1943; Eight Hundred Dollars (\$800.00) per month for the term commencing July 1, 1943 to June 30, 1944; and Eight Hundred Fifty Dollars (\$850.00) per month for the term commencing July 1, 1944 to June 30, 1945.

The Lessees hereby agree to keep the glass of the windows and all internal parts of the said premises in repair, and so leave the same at the end or sooner expiration of the said term.

If the premises rented herein shall be destroyed or rendered untenable by fire or by other unavoidable
 14 casualty, the tenancy hereby created shall be
 thereby terminated, and all liability for rent hereunder shall cease upon payment proportionately to the day of fire or unavoidable accident.

In Witness Whereof, the parties hereto set their hands and seals the day and year first written above.

11th & F St. Valet, Inc.
 By /s/ GEORGE GODA, *Pres.*
 Lessor
 JACK SEKULOW and ABE SEKULOW,
 Lessees

LEE GOODMAN

Witness

.....

Witness

.....

.....

Witness

The Lessor hereby agrees to furnish heat and light for the premises herein demised, and hot water, electric current and air conditioning, and to service and keep same in good condition and repair.

OK GEORGE GODA

The parties to this lease hereby mutually release each other and agree that it be declared null and void as of this 15th day of September, 1944, conditioned however upon the covenants of a Lease for the same premises entered into this 15th day of September, 1944 between George Goda, an individual and Jack Sekulow and Abe Sekulow, a partnership, being performed, including the supplements thereto.

11th and F St. Valet, Inc.

By /s/ George Goda
GEORGE GODA, *Pres.*

/s/ JACK SEKULOW

/s/ ABE SEKULOW

Lessees

per Jack Sekulow

15

Filed May 3 - 1945

Exhibit "C"

Law Offices
FRANCIS J. KELLY
Munsey Building
Washington, D. C.

September 8, 1944

Mr. Jack Sekulow,
Sekulow Brothers,
126 West Baltimore St.,
Baltimore, Md.

Dear Mr. Sekulow:

I am enclosing herewith a new lease for the premises 604 - 11th Street, N. W., Washington, D. C., between you and Mr. George Goda.

When you and Mr. Goda arrange for a time to sign this lease, please have with you a copy of your Power of Attorney to sign for your brother and also your old lease for releasing purposes.

My understanding with Mr. Goda is that this matter must be entirely consummated not later than September 15th.

Very truly yours,

/s/ FRANCIS J. KELLY

FJK/js

16

Filed May 3 - 1945

Exhibit "D"

LEASE

THIS LEASE made on the 15th day of September, 1944, between George Goda, (hereinafter called Lessor) and Jack Sekulow and Abe Sekulow, t/a Sekulow Brothers, 126 West Baltimore Street, Baltimore, Maryland, (hereinafter called Lessee),

Witnesseth:

That for and in consideration of the rents and covenants hereinafter expressed, and subject to the conditions and agreements hereinafter contained, the Lessor has leased and demised unto the Lessee the following described property situated in the District of Columbia, to wit:

The first floor and basement of the building known as No. 604 - 11th Street, N. W., Washington, D. C., for the term of six (6) years commencing on the 1st day of October, 1944 and ending on the 30th day of September, 1950; the Lessee agreeing to pay therefor the aggregate sum of Ninety-Eight Thousand Five Hundred Fifty Dollars (\$98,550), said rent being payable as follows:

Six Thousand Three Hundred Dollars (\$6,300) upon the execution of this lease;

And thereafter the sum of Eight Hundred Fifty Dollars (\$850) on October 1st, 1944 and a similar sum on the 1st day of each and every month until July 1st, 1945;

And from July 1st, 1945 to July 1st, 1947 the sum of Twelve Hundred Fifty Dollars (\$1250) on the first day of each and every month;

And from July 1st, 1947 to September 30, 1950, the sum of Fourteen Hundred Dollars (\$1400) on the 1st day of each and every month.

PROVIDED ALWAYS that this lease is made and accepted upon the following conditions, each and everyone of which the respective parties hereto covenant to and with each other to keep and perform.

THE LESSOR HEREBY COVENANTS, REPRESENTS AND WARRANTS TO AND WITH THE LESSEE,

1. It is agreed that should said premises be destroyed or so damaged by fire or any other casualty not through the fault of the Lessee, his agents or employees, so as to render them untenable in whole or in part, then the rent to be paid hereunder shall abate in proportion to the value of the premises rendered untenable and be again resumed when said premises rendered un-

tenantable are repaired or restored, which the Lessor agrees to do as soon as possible. In the event, however, of the complete destruction of the premises or destruction to such an extent as to materially weaken the structural strength of the premises, it shall be optional with the Lessor whether he shall repair the said premises and continue this lease for the unexpired term thereof.

2. That he will furnish heat, light, and air conditioning, if obtainable, to the demised premises, but he will not provide elevator service to the Lessee either under the terms of this lease or in the event that clause four (4) of Lessee's covenants, hereinafter mentioned becomes effective.

3. The Lessee will be permitted exclusively to display in the front windows of the premises herein demised any article of merchandise which, with the permission of the Lessor, is permitted to be sold on the premises by the Lessee.

LESSEE COVENANTS TO AND WITH THE LESSOR AS FOLLOWS:

1. That he will without demand pay the Lessor the rent hereunto reserved at the time and in the manner specified without any deduction whatsoever; that he will make no unlawful use of said premises but will conduct the same as a millinery shop and that he will not conduct said business in such a manner as to be offensive to the Lessor or in such a manner as to constitute a nuisance; that he will not sublet said premises, or any part thereof, or assign this lease without the written consent of the Lessor first had in writing.

2. That at the termination of this lease by expiration or otherwise, it will quit and deliver up said premises in as good condition as upon the date of this lease, ordinary wear, tear and damage by the elements excepted.

3. Lessee covenants and agrees that he will not make any alterations in said premises without the written consent of the Lessor.

4. It is understood by the Lessee that the second floor of the premises herein demised are at present rented to one Phyllis Bell, who is there operating a school for girls

18 on a month to month tenancy at the monthly rental of Three Hundred Dollars (\$300), and the Lessee hereby agrees that in the event that the said Phyllis Bell terminates her tenancy before the expiration of this lease that the Lessee will lease the second floor of the premises herein demised for a period commencing with the termination of the said Phyllis Bell tenancy up to the expiration of this lease at a rental of Three Hundred Dollars (\$300) per month; but the Lessor does hereby agree that in the event that the Lessee does rent the second floor that the Lessee will be permitted to sublet the second floor to any tenant acceptable to the Lessor.

It is agreed that if the Lessee shall fail to pay any one of the installments of rent herein reserved to the Lessor when and as the same shall become due and payable, although no demand shall have been made for such payment, or if the Lessee shall in any other manner or respect fail to keep and to perform any of the covenants or agreements herein provided to be kept and to be performed by him, or should the Lessee become bankrupt, then the Lessor may at his election, terminate this lease and re-enter and take possession of said premises or recover the possession thereof under the provisions of law regulating such proceedings between landlords and tenants that may be in operation at such time; and said Lessee hereby waives all notice to quit in event of such default. In the event of the failure of the Lessee to pay said rent as herein provided and to perform the covenants and agreements herein provided to be kept and performed, and by reason thereof the Lessor shall institute proceedings for recovery of possession hereunder, such proceedings for recovery of possession shall not relieve the Lessee of his liability hereunder, but his liability for the said rent shall continue to the end of the term herein provided, and his liability in respect to the other covenants and agreements herein contained shall continue notwithstanding such recovery of possession.

IT IS FURTHER AGREED that if the Lessor retakes possession of the demised premises as provided in the preceding

paragraph, or that if such proceedings for the recovery of said premises shall be instituted as hereinbefore provided, and a compromise or settlement shall be made either
 19 before or after judgment whereby said Lessee shall be allowed to retain possession of said premises, such proceedings shall not constitute a waiver of any covenant herein contained or affect this lease.

It is covenanted and agreed that no waiver by either party hereto of any breach of any covenant or condition hereof on the part of the other party hereto to be kept and performed shall be considered to be a waiver of such covenant or provision or of any subsequent breach thereof.

It is covenanted and agreed that all covenants and agreements herein contained shall extend to and be binding on the successors and assigns of the parties hereto.

All payments of rent hereunder shall be made to George Goda at 604 - 11th Street, N. W., Washington, D. C. unless and until the Lessor shall otherwise notify the Lessee in writing after which notice, if any, the Lessee shall make said payments of rent to such person or corporation at such place in the City of Washington, D. C. as the Lessor from time to time may designate in writing to the Lessee.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the day and year first mentioned above.

/s/ GEORGE GODA
 Lessor

/s/ JACK SEKULOW

/s/ ABE SEKULOW

Lessees
 per Jack Sekulow

DISTRICT OF COLUMBIA, SS:

I, Jane Dodge, a notary public in and for the District of Columbia, do hereby certify that George Goda, and Jack Sekulow, parties to a certain lease bearing date on the 15th day of September, 1944, and hereto annexed, personally

appeared before me in said District, the said George Goda and Jack Sekulow being personally well known to me as the persons who executed the said lease, and acknowledged the same to be their act and deed.

Given under my hand and seal this 15th day of September, 1944.

/s/ JANE DODGE
Notary Public, D. C.

My commission expires Dec. 14, 1946.

20

September 15, 1944

Sekulow Brothers,
604 - 11th Street, N. W.,
Washington, D. C.

Gentlemen:

In accordance with our Lease dated Sept. 15, 1944, you are hereby given permission to offer for sale and display handbags both in the first floor of the premises 604 - 11th Street, N. W., and also in the front windows.

Very truly yours,

/s/ George Goda
GEORGE GODA, *Lessor*

/s/ JACK SEKULOW

21

September 15, 1944

Sekulow Brothers,
604 - 11th Street, N. W.,
Washington, D. C.

Gentlemen:

As part of the consideration of the Lease entered into this date for part of premises 604 11th Street, N. W., Washington, D. C., I hereby agree that I will record with the Recorder of Deeds for the District of Columbia both the Lease

between my landlord, Henry Schaffert, Trustee, and myself
and also the Lease between Sekulow Brothers and myself.

Very truly yours,

/s/ George Goda
GEORGE GODA, *Lessor*

/s/ JACK SEKULOW

22

942 Eye Street, Northwest
Washington 1, D. C.
Sept. 15, 1944

Mr. George Goda
604 11th Street N. W.
Washington, D. C.

Dear Sir:

This is to grant you permission to sublet such portions
of premises 604 11th Street northwest to Sekulow Brothers
for a term not to exceed the expiration date of your lease
with us for the premises namely Sept. 30, 1950, as you may
desire.

Sincerely,

/s/ Henry Schaffert
HENRY SCHAFFERT, *Trustee.*

/s/ GEORGE GODA
/s/ JACK SEKULOW

23

Filed May 3 1945

Exhibit "E"

LEASE

This lease dated this 29th day of August, 1940, between
Henry Schaffert, Trustee, party of the first part, and
George Goda, party of the second part, both of the City of
Washington, D. C.

Witnesseth that the party of the first part has leased and
does hereby lease to the party of the second part, premises
known as 604 - 11th Street, N. W., in the City of Washing-

ton, D. C., for the term of Five (5) years, commencing on the first day of October, 1940, at and for a total rental of thirty-six thousand nine hundred dollars (\$36,900.00) payable in monthly installments of \$600.00 per month for each of the first 24 months and \$625.00 for each of the remaining 36 months, in advance, the first months rent to be paid upon the signing of this lease, another on November 1, 1940, and others as they become due, in advance, on the first of each month. It is further agreed between the parties hereto that the said George Goda may renew this lease for an additional 5 years upon the expiration hereof September 30, 1945 at an annual rental of not less than \$7500.00 nor more than \$7800.00, the amount between these figures to be agreed upon by the parties hereto.

And the said party of the second part has agreed to take and does hereby take and hold these premises for the term and rental aforesaid. And he agrees to pay the water rent as it becomes due, and he will not assign or sublet the premises or any part thereof without the written consent of the party of the first part, or use the same for any disorderly or unlawful purposes. It is understood and agreed by and between the parties hereto, that if the party of the second part shall deem it expedient to incorporate his business, he shall have the right to turn over and assign this lease and said premises described herein to such corporation as may be formed for the purpose of carrying on and conducting such business, such an act shall, however, not release him from the responsibility of carrying out the provisions of this lease.

24 It is further agreed that if an installment of rent hereinbefore mentioned be not paid at the time agreed upon, although no demand shall have been made for the same, or if any of the covenants herein contained be not performed according to their full tenor and effect, or if any other business be conducted therein other than a complete valet shop which may include a barber shop and a beauty parlor, without the written consent of the party of the first part, then the said party of the first part shall have the

right, at his option, to declare this lease annulled and forfeited and to re-enter on the said premises and to repossess the same, and avail himself of all the remedies provided by the law regulating proceedings between landlord and tenants, all notice now required or to be required being hereby expressly waived.

And it is further provided that if, under the provisions of this lease a court summons shall be served, and a compromise or settlement made thereupon, it shall not constitute a waiver of any covenant herein contained of the lease itself. And the lessee agrees to deliver the premises in the same good order which they were received, usual wear and tear, fire and storm excepted: And it is further agreed shall keep the building and all equipment therein in good condition and proper working order, the lessor to keep the roof and plumbing outside the building line in repair when notified by the lessee that such repairs are needed. *And the lessee agrees to so conduct and manage his business so that no fire escape will be required in front of the building. And the lessee shall keep the front cellar doors and vault lights in the sidewalk in good and safe condition. And the said lessee will upon vacating the building repair all damages caused by the removal of his fixtures, etc. The lessee will provide proper cans for the storage of waste material and will not allow paper, boxes or other inflammable materials in any part of the building so as to create a fire hazard.*

And it is further agreed that should the premises be destroyed or so damaged by fire or any other casualty
 25 not through the fault of the lessor, his agents or employees so as to render them untenable in whole or in part, then the rent be paid hereunder shall abate in proportion to the value of the premises rendered untenable and be again resumed when said premises are repaired or restored, and the party of the first part agrees to do as soon as possible. In the event, however, of the complete destruction of the premises or destruction to such an extent as to materially weaken the structural strength of the prem-

ises, it shall be optional with the party of the first part whether he shall repair the said premises and continue this lease for the unexpired term thereof.

/s/ HENRY SCHAFFERT, *Trustee.*

/s/ GEORGE GODA

Usual Jurat dated Aug. 29, 1940

Signed by notary

The obligations of this lease are conditioned upon lessor completing the following alterations:

1. Hot water heater suitable for a beauty parlor.
2. Two additional lights on main floor.
3. Laying of flooring on main floor in proper manner.
4. Fluorescent lights on fourth floor.

26

HENRY SCHAFFERT

942 Eye St., N. W.

Washington, D. C.

Sept. 7, 1944

Mr. Henry Schaffert, Trustee
942 Eye St., N. W.,
Washington, D. C.

Dear Sir:

Under the terms of the lease entered into on the 29th day of August, 1940 for 604 - 11th St., N. W. for a term of five years, with a privilege to renew for an additional five years at a rental not to exceed \$7800, payable in monthly installments of \$650, from first day of Oct. 1945, I am hereby advising you of my desire to extend this lease for the additional five years from Oct. 1, 1945 at a annual rental of \$7800 and payable in monthly installments of \$650.

(signed) George Goda
GEORGE GODA

Agreed to:

(signed) Henry Schaffert
HENRY SCHAFFERT, *Trustee.*

* * * * *

Filed Jun 4 1945

Answer of Both Defendants

1. Admitted.

2. The defendant, Goda, denies that he informed plaintiffs that he owned the building but he admits entering into the lease in the name of 11th and F St. Valet, Inc. as lessor and he further admits that he informed plaintiffs that he owned and controlled the corporation. Both defendants allege that the plaintiffs failed to carry out the provisions of this lease by refusing to give an accurate account of the gross volume of business done during the term of the lease. Defendants admit that the rent was regularly paid in accordance with the minimum rental stipulated in the lease to 11th and F St. Valet, Inc. and was deposited in the account of the corporation.

3. Defendants admit the allegations of paragraph 3 but deny that the plaintiffs carried out the provisions of this lease in that they did not give an accurate account of the gross volume of business done during the term of the lease.

4. Defendants admit that shortly before July, 1942 there were negotiations between the parties looking forward to the cancellation of the pre-existing lease and the entering into of a new lease based on a flat rental rather than rental on a percentage basis, but defendants allege that this
28 was occasioned by plaintiffs' refusal to give an accurate statement of their gross volume of business.

5. Defendants admit the execution of the new lease dated July 1, 1942 in the terms set forth in the complaint but allege that the wording of the renewal clause was forcibly brought to the attention of plaintiffs because defendants stated that it would be renewed only in the event that 11th and F St. Valet, Inc. still occupied the premises as a tenant of the owner.

6. Defendants deny that the plaintiffs first noticed the exact wordage of the aforesaid option to renew *after* the execution of the last mentioned lease and allege that it was brought to their attention at the time of its execution and

also deny that there was ever any representations made that the defendants or either of them was the owner of the building.

7. Admitted.

8. Denied. It is admitted that negotiations were carried on between Jack Sekulow and George Goda during August and September of 1944 concerning the renewal clause in the then existing lease which was to run until July, 1945. Goda flatly stated that rather than renew with plaintiffs at a rental not to exceed One Thousand Dollars (\$1000) per month that he would forego the renewing of his lease with the owner because the venture so far as Goda or his corporation were concerned had been far from profitable. Goda further admits stating to Sekulow that he had other offers much in excess of \$1000.00 per month.

Goda further admits that he cautioned Sekulow that a time limit would have to be set during which Sekulow could make up his mind whether to cancel the then-existing lease and enter into a new one or not as Goda had to make other plans.

9. Both defendants are without any knowledge concerning any belief that Jack Sekulow may have had concerning Goda's having obtained a new lease in his own name but it is admitted that the parties met as alleged.

10. Defendants state that at the time September 29 15, 1944 that no conversations were had concerning the substance of the new lease about to be executed, these matters having been arrived at by Goda and Sekulow prior to said meeting.

Defendants admit that an already prepared letter from the owner was exhibited to plaintiffs showing defendants' right to sub-lease the premises. The defendants admit the promise to record the new lease and a copy of the lease between Goda and the owner.

Defendants allege that the sole purpose of the meeting of September 15, 1944 was to execute a release from the then-existing lease and to execute a new lease on terms which had

already been arrived at between the parties, although at said meeting there was some trivial discussion concerning heat, air-conditioning, and the display of handbags.

11. Defendants deny any duress, concealment and demands and especially any threat of eviction since the prior lease still had approximately nine months to run and plaintiffs would have had all that time in which to seek a new location.

12. Defendants allege that the original lease between the owner and Goda, dated August 29, 1940, gave the lessee the right to assign and that this lease was assigned to 11th and F St. Valet, Inc. on December 26, 1940 and on the 6th of September, 1944, it was turned back from the corporation to Goda. The remaining allegations of paragraph 12 are admitted.

13. Both defendants admit the figures contained in paragraph 13 but deny that plaintiffs were compelled to accept the tenancy under these conditions and deny all allegations of fraud, duress, concealment, misrepresentations, demands and threats.

14. Defendants admit the allegations of paragraph 14 and especially the receipt of letters on or about March 15, 1945, purportedly electing to avoid the lease of September 15, 1944.

15. Denied.

Wherefore, the premises considered, defendants demand judgment.

FRANCIS J. KELLY

30

Filed Nov 4 1946

Plaintiffs' Exhibit 2

AGREEMENT

This lease, made this 3 day of July, 1941 between 11th & F St. Valet, Inc. hereinafter called the Lessor, and Jack Sekulow and Abe Sekulow, trading as Sekulow Bros., a partnership, 205 N. Liberty Street, Baltimore, Maryland, hereinafter called the Lessees, witnesseth:

That the Lessor has agreed to let and hereby does let unto the Lessees, and the Lessees do hereby take and hire from the Lessor, premises known as No. 604—11th Street, N. W., Washington, D. C., of which premises, the said Lessees shall have the right to occupy the entire first floor and basement, to be used as a women's hat shop, for the term of one year to commence on July 1, 1941. The Lessees are to have the exclusive use of the two front windows on the first floor for millinery display only. No other signs or displays of other tenants are to be used in the first floor windows or on street door. The Lessees shall have the option to renew this lease for a term of four years, provided they give the Lessor thirty days written notice before the expiration of this lease. The same conditions will apply to the renewal lease as are contained in this lease.

The Lessees agree to pay to the Lessor Eighteen per cent of the gross receipts of said business on said premises, for the period of this lease. The Lessees further agree to pay to the Lessor a guaranteed minimum rental of Five Hundred Dollars, (\$500) per month payable in advance on the first day of each month. The said minimum rental shall be taken into consideration to arrive at the amount due to the Lessor. That is, if eighteen per cent of the gross receipts of said business is greater than the amount of Five Hundred Dollars, (\$500.00) per month, the minimum rental paid shall be deducted from the amount due to the Lessor. However, in any event the said minimum rental shall be paid to the Lessor as aforesaid. At the expiration of this lease if

the Lessees are obliged to pay more than the minimum rental agreed upon herein, Three Hundred Dollars, (\$300.00) shall be applied against the excess over minimum. If, according to this lease, the Lessees will not be obligated to pay more than the minimum rental, then no allowance shall be made for the Three Hundred Dollars, (\$300.00).

The Lessees further agree that for the purpose of ascertaining the amount payable as rent for the annual period

above mentioned, they will keep at the premises herein demised, books which shall show daily sales and services made by the Lessees in, on or from the demised premises and further agree to deliver to the Lessor statements of the total sales and services at the expiration of this lease, and at the election of the Lessor, to give to the Lessor access to such books, accounts, records and reports of receipts kept in or upon the premises herein demised as show the daily receipts in such business by Lessees and to permit Lessor to have an audit made thereof by accountants appointed by Lessor. If such audit reveals error as result of which the Lessor has been paid less than the amount to which it is entitled, then the expense of such audit shall be borne by the Lessees, otherwise it will be borne by the Lessor.

The Lessees hereby agree to keep the glass of the windows upon the said premises in repair, and so leave the same at the end or sooner expiration of the said term.

The Lessor hereby agrees to furnish heat and light for the premises herein demised, and hot water, electric current and air conditioning, and to service and keep same in good condition and repair.

If the premises rented herein shall be destroyed or rendered untenable by fire or by other unavoidable casualty, the tenancy hereby created shall be thereby terminated, and all liability for rent hereunder shall cease upon payment proportionately to the day of fire or unavoidable accident.

In Witness Whereof the parties hereto set their hands and seals the day and year first written above.

E H BOGLE

Witness

By

Lessor

JACK SEKULOW

ABE SEKULOW,

Lessees.

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Filed Nov 4 1946

Plaintiffs' Exhibit 7

(Civil Action No. 28798)

Washington, December 26, 1940

I, George Goda, in consideration of one dollar, do hereby assign all my rights in a lease dated Aug. 29th, 1940, between me and Henry Schaffert, Trustee, for the premises 604 - 11th Street, N. W., Washington, D. C. to the 11th and F Street Valet, Inc.

/s/ GEORGE GODA

33

Filed Nov 4 1946

Plaintiffs' Exhibit 8

(Civil Action No. 28798)

There was a meeting of the corporation (11th and F Street Valet, Inc.) on September 6th, 1944, and the following is an extract from the same:

“It was decided that because of the tax situation that the corporation would become dormant. Accordingly, on motion by Mr. Kelly, seconded by Mr. Goda, the lease formerly held by Mr. Goda from Henry Schaffert, Trustee, for premises 604 - 11th St., N. W., Washington, D. C., which had been transferred to the corporation on December 26th, 1940, be transferred and assigned back to George Goda as of this date.”

34

Filed Nov 4 1946

Plaintiffs' Exhibit 9

(Civil Action No. 28798)

Telephone, Calvert 1589

Operators of Millinery Specialty Shops
SEKULOW BROS.
Makers and Distributors of
"Buddy Dale Hats"
126 West Baltimore Street
Baltimore 1, Md.

March 12, 1945

11th & F St. Valet, Inc.
% Mr. George Goda
% Paramount Hotel
259 Flagler Street
Miami, Florida

Re: Exercise of option pursuant to Lease dated
July 1, 1942.

Gentlemen:

Under date of July 1, 1942, the undersigned entered into a lease with you covering a part of premises 604 - 11th Street, N. W., Washington, D. C. This lease provided:

"The lessees shall have the option to renew this lease for a term of five years at a monthly rental not to exceed One Thousand Dollars (\$1000.00) per month, the exact terms to be agreed upon between the parties, provided they give the lessor thirty days written notice of their intention to exercise this option and provided further that the lessor shall occupy the premises as a tenant of the owner."

On September 15, 1944, Mr. George Goda, who acted for you in all our negotiations with you in making said lease and in all matters arising in connection with said lease, procured the execution by us of a purported new lease, notwithstanding our opposition to any material change in the situation then existing and our expressed desire to exercise our option under our then current lease, by force of misrepre-

sentations and concealment, including, among others, assertions that the original landlord had entered into a new lease with a party other than our sub-lessor, 11th & F St. Valet, Inc., Thereby nullifying our option rights; that there was in immediate contemplation a prospective lease with a new sub-tenant at a much higher figure than provided in our lease; and by the threat to dispossess us in the event of our failure to accept the ultimatum presented by him personally and also through counsel, to execute forthwith a newly proffered form of lease or risk the loss of possession by eviction in favor of a new tenant upon the expiration of our then current term, on June 30, 1945, thereby leading us to believe that we faced the loss of our business and location unless we immediately acceded to the demands thus made upon us.

35 When we entered into the lease of July 1, 1942, our negotiations were with Mr. George Goda, who then represented that the 11th & F St. Valet, Inc., had the right and authority to enter into the said lease; that relying upon said representation, we executed said lease; we paid rent thereunder to the said Corporation; that the said Mr. Goda, who owned, controlled and dominated said Corporation, received the benefits and we are advised that he is now estopped from alleging the invalidity of said lease; and we are now advised, for the reason aforesaid, and for other reasons, that the lease of July 1, 1942, is valid; that the lease of September 15, 1944, and the cancellation of said lease of July 1, 1942, are voidable. We do elect to avoid said lease of September 15, 1944, and to avoid the cancellation of the lease of July 1, 1942.

Further, we hereby notify you that we do hereby exercise our option to renew the lease of July 1, 1942, for a term of five (5) years (commencing upon the expiration of said lease of July 1, 1942), at a monthly rental not to exceed One Thousand Dollars (\$1,000.00) per month. If you will agree to a rental less than One Thousand Dollars (\$1,000.00) per month, we will appreciate your cooperation; if you will not agree to a lesser rental, we will pay One Thousand Dollars (\$1,000.00) per month. With respect to

these terms we shall be pleased to confer with you, should you desire a conference. Please confirm the renewal of said lease, and advise as to the exact rental.

We are sending one duplicate copy to you by registered mail and one by ordinary mail. In view of the position taken by Mr. George Goda, we are writing him, and giving notice of the exercise of our option to renew, and are sending him a copy of this letter, and are sending you a copy of our letter to him.

Very truly yours,

JACK SEKULOW

ABRAHAM SEKULOW

Registered—

Return Receipt Requested.

1 enclosure

36

Filed Nov 4 1946

Plaintiffs' Exhibit 10

Phone, Calvert 1589

Operators of Millinery Specialty Shops
(Civil Action No. 28798)

SEKULOW BROS.
Makers and Distributors of
"Buddy Dale Hats"
126 West Baltimore Street
Baltimore 1, Md.

March 12, 1945

Mr. George Goda
c/o Paramount Hotel
259 East Flagler Street
Miami, Florida

Re: Exercise of option pursuant to Lease of July 1, 1942

Dear Mr. Goda:

Please find enclosed herewith copy of letter of even date to 11th & F St. Valet, Inc. Said letter is made a part hereof

to the same extent and purpose as if set out verbatim herein.

For the reasons set out in said letter we do elect to avoid said lease of September 15, 1944, and the cancellation of the lease of July 1, 1942.

Further, we hereby notify you that we do hereby exercise our option to renew the lease of July 1, 1942, on premises at 604—11th Street, N. W., Washington, D. C., for a term of five (5) years (commencing upon the expiration of said lease of July 1, 1942), at a monthly rental not to exceed One Thousand Dollars (\$1,000.00) per month. If you will agree to a rental less than One Thousand Dollars (\$1,000.00) per month, we will appreciate your cooperation; if you will not agree to a lesser rental, we will pay One Thousand Dollars (\$1,000.00) per month. With respect to these terms, we shall be pleased to confer with you, should you desire a conference. Please confirm the renewal of said lease, and advise as to the exact rental.

Please send us the Six Thousand, Three Hundred Dollars (\$6,300.00) paid to you at the time of the execution of the lease of September 15, 1944. We are sending one duplicate copy to you by registered mail and one by ordinary mail. In view of the interest of 11th & F St. Valet, Inc., we are sending it a copy of this letter.

Very truly yours,

JACK SEKULOW

ABRAHAM SEKULOW

Registered

Return Receipt Requested

1 enclosure

37

Filed Nov 4 1946

Defendants' Exhibit 3

Phone, Plaza 2947

Everything in "Trimmed Hats"

(Civil Action No. 28798)

SEKULOW BROS.

Makers and Distributors of

"Sekbro Hats"

17 Hopkins Place

Baltimore, Md.

May 29, 1942

11th & F Street, Valet Inc.

604—11th & F Street, N. W.

Washington, D. C.

Attention: Mr. George Goda

Dear Mr. Goda:

We hereby exercise our option of lease dated July 3, 1941, to renew lease for period stated (4 years), and under the terms stated in the lease.

Very truly yours,

JACK SEKULOW

Sekulow Bros.

* * * * *

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Filed Jan 31, 1946

Memorandum.

(Opinion)

Complaint dismissed.

I find neither fraud nor duress. The evidence indicated that plaintiffs were experienced and successful businessmen dealing with another of like kind.

The so-called proviso is explicit and unambiguous: "... that the lessor still occupied the premises as a tenant of the owner". Goda never was the plaintiffs' lessor. "A

corporation is a person and its ownership is a nonconductor that makes it impossible to attribute an interest in its property to its members" (Klein v. Board of Supervisors, 282 U. S. 19, 24) and "... the corporate personality is a fiction ... intended to be acted upon as though it were a fact ... " (International Shoe v. State of Washington, U. S. , October Term, 1945, December 3, 1945).

/s/ MATTHEW F. McGUIRE
Justice

January 3, 1946

* * * * *

166

Filed Jul 30 1946

Findings of Fact and Conclusions of Law

Upon consideration of the evidence adduced at the hearing of the above-entitled cause, and upon consideration of the arguments of counsel, the Court finds the facts and states the conclusions of law as follows:

FINDINGS OF FACT

1. That on the 29th of August, 1940, a lease was entered into between one Henry Schaffert, trustee, as lessor, and the defendant, George Goda, as lessee for the rental of premises 604 11th St., N. W., Washington, D. C., for a term of five years commencing on the first day of August, 1940. The rental stipulated was \$600.00 per month for the first two years and \$625.00 per month for the last three years. The lessee was to take care of his own light, heat, service charges, and repairs.

Under the terms of this lease, the defendant, Goda, was given the privilege of renewing for an additional term of five years at an annual rental of between \$7,500.00 and \$7,800.00, the exact amount to be agreed upon between the parties. By a further provision, the lessee was given the power to assign this lease to such corporation as may
167 be formed for the purpose of carrying on the business without releasing him, personally, from the responsibility of carrying out the provisions of the lease.

2. On December 26, 1940, the defendant, George Goda, assigned the lease to the 11th and F St. Valet, Inc., a Delaware corporation, and received in return 50 shares of stock in the corporation. Defendant Goda caused said corporation to be organized, owned all of its stock and dominated and controlled it.

3. The plaintiffs (lessees) were and are engaged in the business of selling ladies' hats and have several places of business, both in the District of Columbia and elsewhere.

4. On February 1, 1941, the corporation, as lessor, entered into a lease with plaintiffs as lessees for the second floor of the premises, this lease to expire June 30, 1941, at a rental of \$150.00 per month, plus ten percent of the gross business in excess of \$9,000.00. The lessees were given the further option of renewing this lease for an additional term of four and one-half years.

5. On or about July 3, 1941, the defendant corporation as lessor and the plaintiffs as lessees entered into lease number two for the first floor and basement of the premises for a term of one year with an option to renew for a term of four years. The renewal clause in lease No. 1 was therefore abandoned. Under the terms of lease No. 2, the lessees were to pay a minimum rental of \$500.00, or 18 percent of the gross business, whichever was greater.

6. On or about May 29, 1942, plaintiffs wrote a letter to the defendant corporation, purporting to renew lease No. 2 for a period of four years.

7. Under date of July 1, 1942, the defendant corporation as lessor and the plaintiffs as lessees entered into lease No. 3, they having agreed to abandon the renewal clause in lease No. 2, the plaintiffs testifying that the 18 percent figure was too high and the defendants asserting that the letter of May 29th was not carried into effect because of dissatisfaction over the figures of gross business submitted by plaintiffs.

168 Under the terms of this third lease the lessees were to occupy the first floor and basement of the premises for a period of three years with rental as follows:

\$750.00 per month from July 1, 1942, to June 30, 1943; \$800.00 per month from July 1, 1943, to June 30, 1944; \$850.00 from July 1, 1944, to June 30, 1945. Another clause in the lease stated

"The lessees shall have the option to renew this lease for a term of 5 years at a monthly rental not to exceed \$1,000.00 per month, the exact terms to be agreed upon between the parties, provided they give the lessor 30 days written notice of their intention to exercise this option and provided further that the lessor still occupies the premises as a tenant of the owner".

8. The plaintiffs testified that when they made leases No. 1 and No. 2 they, as a result of the manner in which Mr. Goda dealt with them, believed that the corporation did own the building, and that Mr. Goda did not disclose that the corporation did not own the building; and that upon reading in the third lease the wordage "provided that the lessor still occupies the premises as a tenant of the owner", they learned for the first time that the corporation was merely a lessee of the premises. The plaintiffs conferred with Mr. Goda about this provision, and they testified he told them you have nothing to worry about, as long as I am here, you boys will be here.

A witness for the defendants testified that he prepared the third lease and read it over in the presence of one of the plaintiffs and Mr. Goda; that he advised it could not be signed because the corporation was binding itself to renew a lease with Mr. Sekulow and the attorney did not know whether Mr. Goda would renew his lease with the owner; that Mr. Goda had complained that he was not making money, and he told Goda he should not bind himself when he did not know if he would renew his lease with the
 169 owner; and that he thereupon added the words "provided that the lessor still remains as a tenant of the owner". The Court finds that Mr. Goda did not represent that the corporation was the owner of the building and the

parties did discuss the above-quoted clause prior to the execution of the No. 3 lease.

9. The Court finds that some time in the spring of 1944, the plaintiff, Jack Sekulow, approached the defendant, Goda, with a view to setting the rental for the five year option period of lease No. 3, and that Goda stated that it was too early to talk about it. During the summer of 1944, there were numerous conversations between plaintiff, Jack Sekulow, and defendant, Goda, concerning the renewal clause and in the latter part of August, 1944, Goda stated that rather than renew with plaintiffs at a rental not to exceed \$1,000.00 per month, the corporation would forego the renewing of its lease with the owner, because he was not making any money out of it. Lease No. 3, by its terms was not to expire until July 30, 1945; there were some further conversations, and Goda testified he entered into a verbal agreement with the plaintiff, Jack Sekulow, that Lease No. 3 was to be released and a new lease entered into, commencing September 15, 1944, and ending on September 30, 1950. The plaintiffs deny that there was any such agreement. The defendant Goda, through his attorney on September 8, 1944, mailed to the plaintiffs a copy of a new proposed lease, in which letter the attorney further stated that the matter had to be consummated not later than September 15. The plaintiffs sought an extension of time, which was refused.

10. On September 6, 1944, the corporation minutes show that the lease from Schaffert to Goda and which had been assigned to the corporation was transferred and assigned back to George Goda.

170 11. On September 7, 1944, Goda wrote to Henry Schaffert, exercising his privilege to renew at an annual rental of \$7,800.00, which was accepted by Henry Schaffert.

12. On September 15, 1944, defendant Goda, and the plaintiff Jack Sekulow, both represented by attorneys, met in the office of Goda's attorney in Washington. Sekulow again wished to discuss the terms of the proffered lease, but

Goda told him if he was not prepared to sign it to forget about it. Thereupon, the plaintiffs entered into a release of lease No. 3, which release reads as follows:

"The parties to this lease hereby mutually release each other and agree that it be declared null and void as of this 15th day of September, 1944, conditioned however, upon the covenants of a lease for the same premises entered into this 15th day of September, 1944 between George Goda, an individual and Jack Sekulow and Abe Sekulow, a partnership, being performed, including the supplements thereto."

Mr. Goda, as lessor, and the plaintiffs, as lessees, then executed lease No. 4, the one now in controversy, running from September 15, 1944, to September 30, 1950, for a total rental of \$98,550.00, payable as follows: \$6,300.00 upon the execution of the lease; \$850.00 per month from October 1, 1944, to July 1, 1945 (which would have been the rental under Lease No. 3 for that term); \$1,250.00 per month from July 1, 1945, to July 1, 1947; and \$1,400.00 per month from July 1, 1947, to September 30, 1950. The plaintiffs were given the permission to sell and display handbags at the store, whereas the prior leases had limited their business to the sale and display of millinery, but the plaintiffs, prior thereto, with the knowledge and tacit consent of the defendants, had sold and displayed handbags in said store.

171 The plaintiffs, at the time of the execution of the four leases, were not aware of the facts set forth in paragraphs 1, 2, 10, and 11 above. However, there was attached to the lease of September 15, 1944, copy of a letter from the owner of the building to Goda permitting Goda to sublet to the plaintiffs for a term not to exceed the expiration date of this lease, namely, September 30, 1950, and the plaintiff, Jack Sekulow, saw this letter before signing the release and the new lease. At the time of the conference immediately preceding the execution of Lease No. 4, the plaintiffs requested the defendants to show their lease with the owner, and the defendants refused to exhibit the same; the defendants did agree at that time, that after the execu-

tion of lease No. 4, they would record the lease with the owner of the property (the plaintiffs did not then know whether the lease was with the defendant, Goda, or with 11th & F Street Valet, Inc., or with some other party), and also they would record lease No. 4. There was a further letter attached to and made a part of the lease, which was addressed to George Goda, signed by Henry Schaffert, granting Goda permission to sublet to these plaintiffs for a term not to exceed the date of Goda's lease, namely September 30, 1950. After these papers were recorded, the plaintiffs learned of the facts disclosed in said papers.

13. The Court finds that the parties were dealing at arm's length, that there was no duress, threats of eviction or undue influence. The Court further finds that there was not even what amounts to extreme business compulsion, inasmuch as on September 15, 1944, the plaintiffs' lease still had almost nine months to run. They were then represented by counsel and are presumed to have known that they could have enjoined Goda from renting to any other party if he renewed his own lease. The Court further finds that there is no ambiguity in the phrase, "provided the lessee still occupies the premises as a tenant of the owner," and that the defendants were at perfect liberty not to renew their option if they chose not to do so. On the contrary, the Court finds that the plaintiffs in order to assure themselves of the continued use of the premises at the expiration of lease No. 3, which would be certain only in the event that the sublessor renewed his master lease, voluntarily executed the release of lease No. 3 and entered into sublease No. 4 at terms which, although not as favorable as they wished, were accepted by them.

14. On March 12, 1945, nearly six months after the execution of the release and of the new lease on September 15, 1944, the plaintiffs addressed to both defendants a letter purporting to exercise the renewal of lease No. 3, dated July 1, 1942. Had lease No. 3 not been released and a new lease substituted in its place, this would have been within the thirty-day period stipulated for the right of renewal of lease No. 3.

CONCLUSIONS OF LAW

1. The evidence discloses that the plaintiffs and the defendants were experienced and successful businessmen. I conclude that there was neither duress nor fraud.

2. I conclude that the option proviso " * * * that the lessor still occupies the premises as a tenant of the owner," is explicit and unambiguous, and did not create an absolute right on the part of the plaintiffs, nor a duty on the part of the defendants to renew the lease with the owner;
 173 and that there was consideration for the execution of the release of Lease No. 3 and for the execution of Lease No. 4. (See also *Hartsville Mill v. U. S.*, 271 U. S. 43, 48, 49, re duress.)

MATTHEW F. MCGUIRE,

Dated 7/30/46.

Justice

Approved as to form.

FRANCIS W. HILL, JR.,

Attorney for plaintiffs.

FRANCIS J. KELLY

Attorney for defendants.

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Filed Jul 30 1946

Order and Judgment

This cause having come on to be heard before the Court upon the Complaint and Answer, testimony having been taken and the cause having been argued, and the Court having entered its findings of fact and conclusions of law, it is this 30th day of July 1946

Ordered that judgment be entered herein for the defendants and that said cause be and the same is hereby dismissed, with costs.

MATTHEW F. MCGUIRE,

Approved as to form.

Justice

FRANCIS W. HILL, JR.,

Attorney for plaintiffs

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II.

EXCERPTS FROM TESTIMONY AND PROCEEDINGS

49 Jack Sekulow, one of the plaintiffs herein, was called as a witness for and on behalf of the plaintiffs,

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Direct Examination

By Mr. Hill:

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50 Q. State your full name, Mr. Sekulow. A. Jack Sekulow.

Q. And you are one of the plaintiffs in this case? A. That is correct.

Q. Along with your brother? A. That is correct.

Q. His name is Abraham Sekulow? A. Abraham Sekulow.

Q. And you trade as Sekulow Brothers? A. That is correct.

Q. Now, in 1941, did you meet Mr. Goda, one of the defendants in this case? A. Yes, I did.

Q. Will you tell the Court just in your own words, if you will, the circumstances which led up to the meeting with Mr. Goda and what took place following that meeting? A. The latter part of 1940 my brother and I decided to get another location in Washington and we looked around for a location on F Street, which was not available.

There was nothing around F Street, so I thought the next thing would be to get a location as near as possible to F Street which I started to look around for a location, and as I was walking down Eleventh Street I noticed this sign "For Rent" on the second floor and it said "Inquire Within", which I did:

51 I walked in and Mr. Goda approached me and asked what he could do for me, what it was, and I said: I am in here to see about the rent sign on the second floor that you have there.

He says, he asked me what type of business we were operating and I told him that we were operating a shop on G Street, millinery, and told him what sort of an operation, a one-price operation—all of our hats were at one price, and he says: Well—I says to him: Can we see the second floor, Mr. Goda?

He said: Yes, go upstairs and look at the place.

We did. We had a discussion about it.

Again I emphasized the type of operation we were operating, which was rather unique for us, because, being on the second floor—and I told him as much in going in first that I thought the space on the first floor was for rent, because there was nothing saying what space was for rent, it just said "Inquire Within. For Rent", but I said, however, there might be a possibility of us making a go of the second floor, and we discussed—I asked him what the rental would be, and Mr. Goda seemed to be very much impressed with our sort of operation, at least he led me to believe—he said: I think you will make a go of it, although it is on the second floor.

With that I said: Mr. Goda, I was in partners with a brother of mine, and I was going back to Baltimore that evening and would discuss it with my brother, and I
52 would let him know, which I did.

I discussed it with my brother and, in fact, my brother was not very much sold on the idea of getting the second floor, but I persuaded him to come over and look for himself, which we did; I think it was the following week. This happened to be on a Saturday that I spoke to Mr. Goda.

We went up to see Mr. Goda, my brother and I, and again we discussed the second floor and I again—I think it was my brother again that called his attention to the idea that it was rather unique for us going on the second floor but nevertheless there may be a possibility of making a go of the place due to the sort of operation we had.

We came to an understanding, Mr. Goda and I and my brother, as to the rental, and we asked Mr. Goda whether

a lease could be drawn up. He said, well, he said: I don't think a lease will be necessary. Supposing you just try the second floor for a short period of time, and then we can enter into a lease.

My brother spoke up and said: Mr. Goda, that is not the usual procedure. After all it is true that it is the second floor, and we never do take a location for less than a year and try it out, but in this case I think it would be fair if we entered into a six-month lease. Surely by the end of six months we ought to know whether we will be willing to remain or not.

Mr. Goda agreed to that and called Mr. Kelly, his
53 attorney, to see whether a lease can be drawn up.

* * * * *

By the Court:

Q. There was a lease drawn? A. Yes.

Q. Was the lease drawn that day? A. Yes, there was.

The Court: All right.

The Witness: Mr. Flynn brought the lease over to Mr. Goda's office and left it for us to read at Mr. Goda's office and, in reading the lease, we noticed that the lessor was 11th & F St. Valet, and I think it was my brother that spoke up and said: Mr. Goda, what is the reason for that?

He said: The 11th & F St. Valet is my corporation. I own it. Everything that I own is in the corporation's name, and I am the corporation.

With that we signed the lease.

54 That was lease number 1.

By Mr. Hill:

Q. Mr. Sekulow, Mr. Kelly and Mr. Flynn, were they your attorneys, or whose attorneys were they? A. They were Mr. Goda's attorney.

* * * * *

By Mr. Hill:

55 Q. Now, Mr. Sekulow, did Mr. Goda disclose to you that the 11th & F St. Valet was not the owner of the building? A. No, he did not.

Q. Did he say anything or do anything to lead you to believe that the 11th & F St. Valet, Incorporated, owned the building? A. Yes, he did.

From the statements that he made, he said: This is 11th & F St. Valet corporation, and it has to appear as the lessor because everything that I own is in that corporation's name, and I am the corporation.

Q. Now, Mr. Sekulow, coming on down to July of 1941, were negotiations carried on for another lease between the Sekulow Brothers and Mr. Goda? A. Yes.

Q. And those negotiations did result in a second lease? A. That is correct.

Q. And that was for which floor? A. For the first floor.

* * * * *

57 Q. Now, Mr. Sekulow, at the time of the making of this lease, did Mr. Goda disclose to you that the 11th & F St. Valet, Incorporated, was not the owner of the building? A. No, there were—

Q. (Interposing) Now, then, Mr. Sekulow, coming down to July 1st, 1942, were further negotiations carried on with Mr. Goda with respect to a third lease? A. That is correct.

Q. Tell us just what took place as to those negotiations, whether they did result in a third lease. A. That is correct.

Q. Tell us just what took place as to those negotiations, whether they did result in a third lease. A. That was in 1942?

Q. Yes. A. It was the early part of '42 that my brother and I had discussed about the increases in our cost of merchandise and, realizing that this discussion was with my brother and myself, and realizing that we had an 18-
58 percent clause based upon the volume, that is, with a guaranteed rental, we realized it was just about coming due for us to exercise our option, and it would also

be under the same arrangement, an 18-percent agreement, and I said to my brother: I think it advisable for me to go to Washington and explain that to Mr. Goda and tell him we would not be interested in entering into this option under that 18-percent arrangement, which I did.

By the Court:

Q. You are talking about the arrangement in the second lease in 1941? A. That is correct, your Honor.

I went over to Mr. Goda. I went to Washington and I saw Mr. Goda and told him just what was happening, that our cost, our merchandise was increasing, and he knew what sort of an operation we were operating, selling all hats at one price, and we tried to maintain that one low price, and he said: Well, I think you boys are foolish; you should raise your price the same as the other merchants do.

I said: That is our policy and we are trying to maintain that, and trying to absorb some of these increases and still sell our merchandise at the same low price, but I want you to know this: We will not be interested in renewing this lease under an 18-percent agreement against the value, because we just cannot do it, because of these increases.

He said: Well, we will just see about that. I will
59 think about it.

And, with that, I left Mr. Goda.

Again I went over to Washington, because my visits were very frequent, and I asked Mr. Goda: If you cannot do anything about what I spoke to you about this renewal, that we cannot go on with that renewal under that percentage agreement.

I asked him if he had done anything about it.

He said: I have. But, he says, I would like to know just how much business you are doing under the 18 percent.

I said: Mr. Goda, I don't know offhand. I can give you some idea, which I do not recall whether I did just at that time, and I said: Have you decided as to what rent you may want as a flat rental, and he said, he quoted this figure, and he said: I think it would be fair, \$750, \$800, and \$850.

I said: Mr. Goda, I think that is a little too much for that volume we are doing.

I said: However, I will go back to Baltimore and discuss it with my brother and see, which I did, and came back.

And he asked me as to how much volume, whether I had checked to see how much volume there was that we had been doing under the 18-percent arrangement, and I do not recall, but I believe there is some slip of paper I gave Mr. Goda as to the figures we were doing on the 18 percent, and he agreed on the figures, and he said: I think that would

be a fair rental, a flat rental, \$750, \$800, and \$850, 60 but he said, however, he said: I would like to have—

that was about in May—that must have been about May or April that these negotiations were going on as to this flat rental, and he said: I would like to have the figures for the fiscal year for the volume you have been doing under the 18-percent arrangement.

I said: Well, Mr. Goda, the year is not over yet, but as soon as it is I will have these figures available from my auditor.

But I did ask him this, and I remember I said definitely: Is that the rental you want under the option, \$750, \$800, and \$850?

He said: Yes, pretty definite, that will remain that way. And he said: How soon can you have any figures?

I said: I will get in touch with my auditor and try and get them as quickly as I possibly could.

During these negotiations I also realized that our option, our first, our one-year lease under that was just about running out, and these negotiations were going on, and I did not know what was in Mr. Goda's mind, whether it would be definite, and I sent him a notice that we were ready to exercise our option in case anything might happen, which I think I did, and I brought it some time in June, in June I believe,—no, on July 28, I received those figures from the auditor which I brought over to Mr. Goda and left it with him, and we went over the figures. I think Mr. Goda and

I had made certain notations and we again discussed
 61 the final terms of this lease, and Mr. Goda and I went
 over to Mr. Kelly's office and we stated our facts as
 to the terms of the lease we wanted Mr. Kelly to draw up,
 and Mr. Kelly made his notes, and he said: Well, gentle-
 men, as soon as I have these leases drawn up, I will give
 them to Mr. Goda.

By Mr. Hill:

Q. And the lease was drawn up and was presented to
 you? A. The leases were drawn up and presented to me at
 Mr. Goda's office.

Q. And were they signed by you in Mr. Goda's office? A.
 That is correct.

Q. Or where did you sign them? Was your brother with
 you on that occasion? A. No, he was not—you mean at
 the signing?

Q. Yes. A. My signing?

Q. Yes. A. No.

Q. Did you take the leases back to Baltimore for his sig-
 nature? A. That is correct.

Q. Did he go over the leases? A. My brother, yes.

Q. Do you recall—

62 By the Court:

Q. You say "the leases." You mean the original
 and a copy of the lease of July 1942?

Mr. Hill: July 1942.

Mr. Kelly: You have not offered them.

Mr. Hill: Not as yet, no.

By Mr. Hill:

Q. Do you recall the date that you signed those leases
 which bear the date of July 1, 1942? A. That is lease num-
 ber 3?

Q. Yes, lease number 3. A. Lease number 3?

Q. Yes. A. I signed that on September 14.

Q. 19— A. (Interposing) 1943.

Q. No. A. '44, was it?

Q. '42. A. '42, that is right, sir.

* * * * *

64 Q. Mr. Sekulow, we refer to Exhibits 1, 2, and 3 as applying to these three leases.

I believe you testified that all three were prepared by attorneys representing Mr. Goda? A. That is correct.

Q. Did you have any attorney representing you in the negotiations with respect to these three leases? A. No, we did not.

Q. Now, each of the three leases that we have offered in evidence contain option clauses.

Were those forced upon you by Mr. Goda or were they put in those leases at your request and demand? A. No, they were not forced upon me by Mr. Goda; I asked for the option.

Q. And you agreed as to the rental provided in the options? A. That is correct.

Q. With respect to the third lease, before this was executed had you asked for an option there—the one
65 dated July 1, 1942? A. Yes.

Q. Did you agree upon the amount of maximum rental in the option? A. That is correct.

Q. Now, I do wish to bring to your attention the concluding part of the option, after you say:

“The lessees shall have the option to renew this lease for a term of five years at a monthly rental not to exceed \$1,000 per month, the exact terms to be agreed upon between the parties, provided they give the lessor 30 days written notice of their intention to exercise this option and provided further that the lessor still occupies the premises as a tenant of the owner.”

When were you first conscious of that provision “provided further that the lessor still occupies the premises as a tenant of the owner”?

A. This is lease number 3 (examining document).

I was not conscious of this at all only when that—the other lease—when we came back to renew that, when we came to—this is lease number 3?

Q. Lease number 3.

Let me refresh your recollection:

When you took this to your brother over in Baltimore, did he bring that to your attention? A. Yes.

66 Q. And what did you and your brother do after he brought this clause to your attention? A. My brother and I went over to see Mr. Goda and asked him what was the reason for having the peculiar language provided the 11th & F St. Valet remains as a tenant and Mr. Goda said: Why, there is nothing for you boys to worry about. I took a ten-year lease, and as long as I am here you boys will be here. My word is my bond. You do not have a thing to worry about.

Then my brother spoke up and said: If that is your answer why have it at all in the lease?

He said: I am only putting that in in case something does happen that is beyond my control, that I will be just protected that way, that provided the 11th & F St. Valet does not remain as a tenant.

Q. At that time did you or your brother ask him to show you the lease between himself and the owner of the property? A. Yes.

The Court: Now, will you fix this time, please, Mr. Hill?

My recollection of his testimony is that he is now testifying about the lease, so-called number 3 lease, of July 1942, which he testified he signed in September 1942.

Mr. Hill: That is correct.

67 By Mr. Hill:

Q. Now, the time you came over to see Mr. Goda with your brother, was that after or before the signing in September of 1942? A. I had signed the lease and it was my brother and I that came to Mr. Goda's office after my brother had noticed the peculiar language about provided the 11th & F St. Valet remains as a tenant.

Q. In other words, after you signed, but before your brother signed? A. After I had signed.

Q. But before your brother signed? A. Before my brother signed.

Q. And before the actual delivery of the paper? A. That is correct.

Q. Now, up until the time your brother brought these words to your attention, had you known that the 11th & F St. Valet, Incorporated, was a lessee in the property? A. I do not quite get that question Mr. Hill. Do you mind repeating that?

Q. Up until the time that your brother brought these words to your attention— A. (Interposing) Yes.

Q. I mean “provided further that the lessor still occupies the premises as a tenant of the owner”, did you
68 know that the 11th & F St. Valet was merely a tenant in the property? A. No, I did not.

Q. Then, acting upon Mr. Goda’s statement, did your brother sign the lease? A. No. There was another discussion at the time.

I called Mr. Goda’s attention to the fact that there was a provision omitted from the lease for servicings of electric, heat, and air conditioning, and Mr. Goda said: I don’t remember ever having anything like that in my previous leases.

I said: Mr. Goda, I happen to have lease number 2 here and there was a provision here.

Q. I do not believe that is so very important.

That was added, cut out of the second lease, and put in here? A. Yes, but I am calling the attention of the Court to this: that at that time when we had the discussion about “provided the 11th & F St. Valet remains a tenant,” my brother suggested in that case: after all, you are a man on in years. Supposing we have a letter of recognition from the owner of the property, recognizing us as a tenant.

To that, Mr. Goda did not agree, and he said: I certainly don’t want the owner of the property to know my business.

Q. And he would not agree to that? A. No, he would not agree to that.

Mr. Hill: Now, if your Honor pleases, the lease
69 is already in evidence, and it is just the option clause that I do wish to bring to your attention:

“The lessees shall have the option to renew this lease for a term of five years at a monthly rental not to exceed \$1,000 per month, the exact terms to be agreed upon between the parties, provided they give the lessor 30 days written notice of their intention to exercise this option and provided further that the lessor still occupies the premises as a tenant of the owner.”

By Mr. Hill:

Q. Now, Mr. Sekulow, your brother did sign the agreement and the agreement was delivered? A. Yes, at Mr. Goda's office.

Q. And that was in September of 1942, in Mr. Goda's office? A. That is correct.

Q. And then you carried on your business under that lease. Then sometime in the summer of 1944, did you take up with Mr. Goda the matter of your renewal option?

Mr. Kelly: What date was this?

Mr. Hill: Sometime in the summer of 1944.

The Witness: That was in the spring of the year.

By Mr. Hill:

Q. In the spring of 1944? A. Yes; the early part of 1944.

70 Q. Now, tell us in your own words, please, just what occurred. A. I approached Mr. Goda and told him that we were ready to exercise our option under lease number 3 and, of course, I tried to get it as low, lower than \$1,000, as I would be able to.

Mr. Goda said: Well, I do not see any reason for rushing into this. We still have a year to go. And he just put it off.

With that, I left Mr. Goda.

Several weeks later, again, I approached Mr. Goda and I said: Mr. Goda, I says, I would like to get this thing over with. Let's get together on this and exercise my option.

With these conversations he mentioned these different offers that he was getting for the first floor.

I said: Mr. Goda, that does not interest me at all.

I said: We have an option to renew under an amount not to exceed \$1,000, and I am ready to exercise my option for that amount.

He says: Well, you know, he says, what your clause reads: "provided the 11th & F St. Valet remains as a tenant."

I said: Mr. Goda, what do you mean by that?

He said: Simply the way it is worded, "provided the 11th & F St. Valet remains as a tenant."

I said: Does that mean that we have no right to exercise our option, that you won't exercise our option with us?

He says: Yes.

71 Well, he says, that can easily be arranged. He says to me: That can easily be arranged where the 11th & F St. Valet does not remain as a tenant.

He says: I will admit it would be a dirty trick for me to do that, but that is business, he says, and: furthermore, I want to call your attention to this, if you want to know the truth, that was my reason for inserting that clause in that lease that way, so in case a condition of this kind arose, I can handle it as I see fit.

Q. What occurred after that, Mr. Sekulow? A. Well, we had words between us.

Q. About what date was that conversation? A. That was about these discussions way the early part of 1944; I would say around April or May.

Q. Now, then, were there any further discussions between you and Mr. Goda with respect to the renewal of your option? A. No.

When I left Mr. Goda after this discussion, I said: Is that final, Mr. Goda?

He said: Yes. There is nothing further to discuss. That ends it.

I said: Do you mean, I says, that you won't let us renew our option?

He says: Yes, that is what it is.

Q. Now, did those conversations continue up to 72 nearly sometime in September? A. Yes.

Q. Now, then, I show you a letter from Mr. Francis J. Kelly, dated September 8, 1944 (handing a paper writing to the witness).

Did you receive this letter?

A. (After examining the letter in question) That is correct.

Q. And did you receive with that letter a form of a lease? A. Yes.

Mr. Hill: I want to have these marked as "Plaintiffs' Exhibit No. 4" and "Plaintiffs' Exhibit No. 5".

Let the letter be marked "No. 4".

(A letter signed by Francis J. Kelly, dated September 8, 1944, was thereupon received in evidence, and was by the Reporter marked "Plaintiffs' Exhibit No. 4", and was returned to counsel.)

Mr. Hill: The lease I will ask be marked "No. 5".

(The lease in question, accompanying "Plaintiffs' Exhibit No. 4" was thereupon received in evidence, and was by the Reporter marked "Plaintiffs' Exhibit No. 5", and was returned to counsel.)

Mr. Hill: Your Honor, I wish to offer this letter in evidence. It is from Mr. Kelly and it encloses a new lease; the letter is dated September 8, and the letter states in its concluding paragraph:

73 "My understanding with Mr. Goda is that this matter must be entirely consummated not later than September 15."

The Court: Is there any objection?

Mr. Kelly: No, no objection.

By Mr. Hill:

Q. Now, when you received that letter—and this is the form of lease (exhibiting a paper writing to the witness).

A. (After examining the document last referred to) That is correct.

Q. And the rates set out in this lease provide for a cash payment of \$6,300; rent until July 1st, 1945, at \$850; from July 1st, 1945, to July 1st, 1947, at \$1,250; and from July 1st, 1947, to September 30, 1950, at \$1,400 per month.

Prior to the receipt of this letter and this agreement, had you and Mr. Goda agreed upon making a new lease with any such terms? A. No.

Q. What did you do after receiving this letter and this form of lease? A. The next day I went back to Mr. Goda and asked him what the meaning of that was, this lease and this letter, and he said: Well, that is self-explanatory, that letter; you are supposed to have this lease signed by September 15th.

Q. Was your brother in the service at that time?

74 A. Yes.

Q. Did you make any request with respect to an extension of time? A. Yes. Then I seek counsel, after I left Mr. Goda, when I had gone over to see him, and I went up to see Mr. Stern, my attorney, and I stated to Mr. Stern, my attorney, what had transpired up to that period between Mr. Goda and myself and he said: What would you suggest I do now?

I says: Well, now, you know my brother is in the service and I did not confer with him any; he does not know anything about this or what is going on between Mr. Goda and myself, and I would like to have some postponement for some time, because I received some letter from my brother, he is in hope of getting out of service in three or four weeks.

Q. Was there a request made for an extension of time?

A. Yes, there was.

Q. Was it agreed to? A. No. Mr. Kelly answered that he could not. He was acting under authority of Mr. Goda

and the lease had to be back in Washington, signed, by September 15th.

Q. Did you and your attorney then go over to see Mr. Kelly and Mr. Goda? A. Yes, we did.

Q. What day was that? A. That was on the 15th.

75 Q. Tell us just the conversation—was it at Mr. Kelly's office? A. That is correct.

Q. Tell us just what took place in his office. A. After the usual introductions, my attorney, Mr. Stern, spoke up and said: Gentlemen, before I advise my client to sign this lease, there are a few things I would like to discuss, and Mr. Goda jumped up, all excited, and said: If you are not ready, if you are not going to sign this lease under these rentals, there is nothing to discuss. And he turned to me and said: Jack, he said, are you going to sign this lease?

I said: Mr. Goda, if you put it to me that way, you leave me no other alternative but to sign the lease.

Q. Did Mr. Stern request that he be shown a copy of the lease with the landlord, with the owner of the property? A. Yes, he did.

Q. Did Mr. Goda make any reply? A. He did not. He said that is something, he said, I won't agree to.

Q. Did he finally agree that he would record the lease with the owner after this was signed? A. Yes.

Q. Now, then, this agreement of September 15th was signed on that date by you and by Mr. Goda? A. That is correct.

76 Q. The payment of \$6,300 was made by you in cash on that day? A. That is correct.

Q. You have been in the property, speaking now for the period of the increased rentals, beginning July 1st, and the rent provided for \$1,250.

Have these rents been paid since that date?

Mr. Hill: Mr. Kelly, I do have canceled checks. I suppose there is no question that these payments have been made and there is no dispute about that, and if that is correct I won't bother offering them in evidence, if your Honor please.

By Mr. Hill:

Q. Now, Mr. Sekulow, when did you first see Mr. Goda's lease with his landlord?

Mr. Kelly, may I have that?

Mr. Kelly: Yes (handing certain document to Mr. Hill).

The Witness: After it was recorded. After Mr. Kelly recorded Mr. Goda's lease. We get a copy of Mr. Goda's lease, and it was for the first time realized that a fraud was really pulled on me.

Mr. Kelly: I object to that.

The Court: That is a conclusion by the witness.

I am not bound by that.

By Mr. Hill:

76 Q. Mr. Sekulow, why did you, as long as you did have this third lease with the option agreement, why did you make this fourth lease? A. Well, there was nothing else that I could do.

Q. Will you explain why? A. Well, we had built up a nice following in that location, and we were enjoying a very nice business, and there was nothing else for me to do and I figured myself it was better to have half a loaf than not any.

Q. Was any other space available then? A. No other space was available.

Q. Did you have any information with respect to what Mr. Goda's lease was between him and the landlord at that time, or the owner of the property at that time?

Did you know whether the lease was with him or with the corporation?

A. No, I did not know anything about it.

Q. Or how long it had run? A. The only thing I knew is that Mr. Goda at one time when we came back to discuss it at his office, about the peculiar language while the 11th & F St. Valet was a tenant, he mentioned he was then—he had a ten-year lease.

Q. Now, at the time you executed this lease, you also executed a memorandum on the bottom of lease number 3 which has already been received in evidence, cancelling lease number 3.

Is that correct? A. I do not fully follow your
78 question.

Q. At the bottom of lease number 3 there is a provision which reads:

“The parties to this lease do hereby mutually release each other and agree it be declared null and void as of the 15th of December, 1944.” A. Yes.

Q. Was that agreement executed at the same time this agreement was executed? A. That is correct.

Q. Who requested the execution of this? A. Mr. Goda's lawyer, Mr. Kelly.

Mr. Kelly: What is this?

Mr. Hill: Talking about this release at the bottom of the third lease.

By Mr. Hill:

Q. And he said it had to be executed? A. That is correct, before we entered into this fourth lease.

Mr. Hill: If your Honor please, I wish to introduce in evidence this fourth lease, Plaintiffs' Exhibit No. 5, and I do want to invite your Honor's attention to the item of \$6,300 cash, and the increased rental, \$1,250 and \$1,400, and then there is a letter attached to it reading:

“In accordance with our lease dated September 15,
79 1944, you are hereby given permission to offer for sale and display handbags both in the first floor of the premises 604 Eleventh Street, Northwest, and also in the front windows.”

The Court: That is incorporated by reference?

Mr. Kelly: That is correct.

Mr. Hill: And also attached to it is an agreement, a written agreement by Mr. Goda as part of the consideration of the lease, and that reads:

“As part of the consideration of the lease entered into this date for premises 604 Eleventh Street, Northwest, Washington, D. C., I hereby agree that I will record with the Recorder of Deeds for the District of Columbia, both the lease between my landlord, Henry Schaffert, trustee, and myself, and also the lease between Sekulow Brothers and myself.”

The Court: That is also embodied?

Mr. Kelly: Yes.

Mr. Hill: Also attached is a letter on the letterhead of Henry Schaffert, dated September 15, 1944, which is addressed to Mr. George Goda, 604 Eleventh Street, Northwest, Washington, D. C., which says:

“This is to grant you permission to sublet such portions of premises 604 Eleventh Street, Northwest, to Sekulow Brothers for a term not to exceed the expiration
80 date of your lease with us for the premises, namely, September 30, 1950, as you may desire.”

That is signed Henry Schaffert, Henry Schaffert, Trustee. And that is noted by George Goda and Jack Sekulow.

The Court: This fourth lease covers all the premises of the building?

Mr. Hill: Just the first floor alone—no, there is a provision in there, I am coming to that, that if the second floor becomes vacant, then the Sekulow Brothers shall be required to lease the second floor.

By Mr. Hill:

Q. With respect to the provision I just mentioned, in regard to the requirement that you lease the second floor, did you want the second floor? A. I should say not.

Q. That provision was required by whom? A. By Mr. Goda.

Q. With respect to the matter of the handbags, had you been previously selling handbags in the store? A. Yes, we had.

Q. For about how long? A. I would say a period of from six to nine months.

Q. With Mr. Goda's knowledge? A. Yes. In fact, it was upon Mr. Goda's suggestion that we put bags in.

81 Mr. Hill: Now, if your Honor please, I wish to offer in evidence the lease between Schaffert and Goda.

The Court: Is there any objection?

Mr. Kelly: No.

Mr. Hill: We went over the case pretty well together.

Mr. Kelly: We agreed not to object.

Mr. Hill: The high points of the lease, your Honor, are these:

It began the 1st day of October, 1940, for the entire building, for a period of five years, four floors in the building, and the rent for the five years is \$625 per month.

Then there is the option agreement or privilege, and I think I should read this:

"It is further agreed between the parties hereto that the said George Goda may renew this lease for an additional five years upon the expiration hereof September 30, 1945, at an annual rental of not less than \$7,500 or more than \$7,800, the amount between these figures to be agreed upon by the parties hereto."

The Court: Now, this lease was in full force and effect during the time of the other instruments entered into?

Mr. Hill: Yes, your Honor.

Attached to this lease is a letter on the letterhead of Henry Schaffert, dated September 7, 1944, from Mr. George Goda to Mr. Schaffert, under which Mr. Goda exercises his option, and on the bottom of that letter there is a notation to the effect that Mr. Schaffert agrees to the exercise of that option.

82 The Court: Now, is it a secret for whom Mr. Schaffert is trustee?

Mr. Kelly: Some estate.

Mr. Hill: He is trustee of the Phillips estate. We did not know those facts until just recently.

By Mr. Hill:

Q. Do you have your minute book showing the assignment—

If your Honor please, I shall offer in evidence a letter or a piece of paper dated December 26, 1940, reading:

“I, George Goda, in consideration of one dollar, do hereby assign all my rights in a lease dated August 29, 1940, between me and Henry Schaffert, trustee, for the premises 604 Eleventh Street, Northwest, Washington, D. C., to the 11th & F St. Valet, Incorporated.”

The Court: What was the date of that?

Mr. Hill: It is dated December 26, 1940.

(The letter dated December 26, 1940, above referred to, was thereupon received in evidence, and was by the Reporter marked “Plaintiffs’ Exhibit No. 7”, and was returned to the custody of counsel.)

Mr. Hill: Then, in the minute book of the 11th & F St. Valet, Incorporated, under date of September 6, 1944, there is a meeting of the board of directors of the 11th & F St.

83 Valet, Incorporated, at the principal office of the corporation, and the second paragraph of it states that it was decided that because of the tax situation that the corporation would become dormant, and accordingly, on motion by Mr. Kelly, seconded by Mr. Goda, the lease formerly held by Mr. Goda from Henry Schaffert, trustee, for premises 604 Eleventh Street, Northwest, Washington, D. C., which had been transferred to the corporation on December 26, 1940, be transferred and assigned back to George Goda as of this date.

I offer this in evidence as “Plaintiffs’ Exhibit No. 8”.

(The extract from the minute book of the 11th & F St. Valet, Inc., dated September 6, 1944, was thereupon re-

ceived in evidence, and was by the Reporter marked "Plaintiffs' Exhibit No. 8".)

Mr. Hill: Under these minutes there was no formal back-assignment to the corporation?

Mr. Kelly: None, other than that.

Mr. Hill: But it was agreed that that was to constitute the formal assignment?

The Court: Is there any objection?

Mr. Kelly: No.

* * * * *

84 Mr. Hill (* * *): I do want to offer in evidence the letters from Sekulow Brothers exercising their option..

Do you have those original letters?

(Certain documents were produced by Mr. Kelly.)

Mr. Hill: Is there any objection to these?

Mr. Kelly: No.

(Two letters of Sekulow Brothers, interpreted by counsel offering them as being an exercise of their option, were thereupon received in evidence and were by the Reporter marked, respectively, "Plaintiffs' Exhibit No. 9" and "Plaintiffs' Exhibit No. 10", and were returned to counsel.)

Mr. Hill: These represent the agreement of 1944 and the exercise of the option in 1942, or in the 1942 agreement.

Thank you.

85 Cross-Examination

By Mr. Kelly:

Q. Mr. Sekulow, are you familiar with the complaint which you filed in the original proceedings in this particular case—this is a copy; his Honor has the original.

Did you read it?

A. The complaint?

Q. Yes. A. Yes.

Q. You have stated in paragraph 2: "that upon seeing this said lease", referring to the first lease, "the plaintiffs inquired of the said George Goda as to why the lessor was named as 11th & F St. Valet, Incorporated, rather than George Goda, and he informed them that he conducted his affairs and owned the building in that corporate name, which was the same corporate name appearing on the front electric sign of his valet shop on the first floor, and he further informed the plaintiffs that he was the corporation."

Now, did Mr. Goda actually ever state to you that he was the owner of that building?

A. No, he did not actually say that he was the owner of the building, but he said "everything I own is in the name of the corporation and therefore the 11th & F St. Valet would have to appear as the lessor on the lease."

Q. From that you inferred that Mr. Goda was the
86 owner? Is that correct? A. That is correct.

Q. Now, in any of the written leases which you had with the 11th & F St. Valet, Incorporated, or George Goda, is either George Goda or the corporation ever set out as the owner of the building? A. No, not in any of the leases.

Q. Now, as I understand, this first lease, you were just walking down the street and you saw a sign and walked in.

Is it not a fact that Mr. Roth, then working for Goda, also a Baltimorean, called your attention to that building? A. I do not recall that.

Q. Now, as a result of a certain conversation with Mr. Goda, he stated to you that he conducted all his business in the name of the 11th & F St. Valet, Incorporated, and stated, in effect, "I am the corporation"? A. He said that "I am the owner of the corporation."

Q. Meaning to you all of the corporation? A. That is right.

Q. And then a Mr. Flynn, associated with me, drew up lease number 1.

Is that correct?

A. That is correct.

Q. In which you rented for a period of six months the second floor? A. That is correct.

87 Q. And that first lease had a renewal clause in it?
A. That is right.

Q. You did not renew under the renewal clause? A. No.

Q. Actually, lease number 1 was abandoned, and you moved downstairs and made a new lease with Mr. Goda for the first floor and the basement? A. That is correct.

Q. And this second lease called for a minimum rental, I believe, of \$500 a month, or 18 percent of the gross volume of your business, whichever was greater.

Is that correct?

A. That is correct.

Q. And you stayed on the first floor, or rather you occupied the premises as a tenant on the first floor, under lease number 2, from the 3rd or the 5th day of July, right around the 4th of July, 1941, on.

Is that correct?

A. No. We went down on the first floor about August, Mr. Kelly.

We occupied the first floor about August.

Q. Of 1940? A. Of 1941.

88 Q. Before Pearl Harbor—is that a good way to remember it? A. Yes.

Q. And, under lease number 2, you were supposed to submit certain figures to Mr. Goda from time to time, showing your monthly income so that you might arrive at the rental which he was to be paid? A. Yes.

Q. Now, did there come a time when you submitted certain figures to Mr. Goda?

* * * * *

Q. Did you submit those figures? A. Yes, I did.

Q. And did you later submit these figures on the stationery of Sadur & Company, an accounting firm? A. Yes, I did.

Q. Can you explain the difference between those figures, Mr. Sekulow?

* * * * *

89 Q. You may answer the question, if you will. A.
What question?

Q. Can you explain the difference between the figures?
A. No, I cannot say I do.

Q. Very well. A. Simply this, that these are the figures
that Sadur gave me, and those are the figures that are ac-
curate, and those are the figures that I gave to Mr. Goda.

* * * * *

91 Q. You identify this letter, Mr. Sekulow (handing
a paper writing to the witness)? A. (After exam-
ining the document last referred to) Yes.

92 Mr. Kelly: I offer in evidence a letter dated May
29, 1942, signed by Jack Sekulow.

(A letter signed by Jack Sekulow, dated May 29, 1942,
was thereupon received in evidence and was by the Re-
porter marked "Defendants' Exhibit No. 3" and was re-
turned to counsel.)

By Mr. Kelly:

Q. That was a renewal of lease number 2 on your part.
Was not that correct. A. This letter?

Q. Yes. A. Let me see it a minute, please.

Mr. Kelly: May I see lease number 2?

(A document was presented to and examined by Mr.
Kelly.)

The Court: That is the first floor and basement.

Mr. Kelly: That is right.

The Witness: That is right. But we were ready.

The Court: 18 percent of the gross, or the rent, which-
ever was greatest?

The Witness: Yes.

By Mr. Kelly:

Q. This letter was a renewal of lease number 2? A.
Yes. We sent this letter that we were ready to renew under
that provision there.

Q. But did not you testify on direct examination this morning that you had gone to Mr. Goda and stated
93 that you could not renew lease number 2 on an 18-percent basis because your costs were going up? A. That is right.

That letter was sent after Mr. Goda and I had discussed it, and I asked Mr. Goda what rent he would want on a flat rental, and he stated the figure.

Then he asked me how soon I could have my figures from my auditor, which I said I would try to get them back as quickly as I possibly could.

During that lapse of time, from the way Mr. Goda kept putting me off, every time I came with any sort of these negotiations or discussions, I thought as a matter of protection I would send that letter at that time, because the time was approaching whereby we had to notify when we would be ready to exercise that option.

Q. All right. Lease number 2 was actually renewed, despite that letter.

Is that correct?

A. Lease number 2?

Q. Yes. A. No, it was not renewed.

Q. You actually entered into another lease with Mr. Goda or the 11th & F St. Valet, which we refer to as lease number 3, on a flat rental basis.

Is that correct?

94 A. Yes. We entered into a lease on a flat rental basis.

Q. Do you recall where lease number 3 was signed, Mr. Sekulow? A. Yes.

Q. Where? A. At Mr. Goda's office.

Q. Do you recall having been to my office and discuss lease number 3? A. Yes, I came over with Mr. Goda.

Q. And do you recall any conversation with me or any statements by me concerning a clause:

“provided the lessor still remains as a tenant of the owner”?

A. No, there was no mention of that.

Q. Are you saying definitely there was not, or that you do not remember? A. No.

Q. There definitely was not? A. There definitely was not.

Mr. Kelly: Mr. Hill, I take it there is no question about the deposition of Mr. Sekulow and the deposition of Mr. Goda?

Mr. Hill: No, no.

By Mr. Kelly:

Q. At the time the deposition was taken, Mr. Sekulow, and I am referring now to page number 10, * * *

* * * * *

95 Q. Do you recall the following question and answer:

“Question. Do you recall that when both of you were speaking about the option to renew this lease for a term of five years, that the lease had already been prepared, and it was then that I stated that the clause would have to be inserted, ‘provided, further, that the lessor still occupies the premises as a tenant of the owner’ ”? And your answer was:

“Answer. No, I cannot say that I do remember that.”

And then the following question:

96 “Question. Is it your testimony that the first time that that particular phrase came to your attention was since you had executed this lease now in controversy?” And your answer was:

“Answer. That is correct.”

And the following question:

“Question. You deny that I called it to your attention at that time?”

And your answer:

“Answer. I do—I don’t recall you ever calling it to my attention.”

* * * * *

97 Q. Then, you commenced negotiations with Mr. Goda concerning the fourth lease itself, I believe it is your testimony, in the spring of 1944? A. That is correct.

Q. Now, your third lease was to expire when? A. 1945.

Q. July? A. July; that is right, June 30th.

Q. June 30, 1945, lease No. 3 was to expire if it was not renewed? A. That is correct.

Q. And you started negotiations toward its renewal in March or April of 1944, fourteen, fifteen, sixteen months prior to the time it was to expire? A. That is correct.

Q. And the first one or two conversations you had with Mr. Goda, in them he stated that this is not the time to talk about it, or, we have plenty of time; something like that?

A. That is right.

98 Q. Between the time you commenced the negotiations in March and April, have you a rough idea of how many conversations you had with Mr. Goda concerning a renewal or concerning a new lease before you actually signed it on September 15, 1944? A. About two or three.

Q. You just had two or three? A. Yes.

Mr. Kelly: Will your Honor indulge me a moment, please?

The Court: Yes.

By Mr. Kelly:

Q. During any of these conversations with Mr. Goda, did you ever offer to pay him a rental for the fourth lease in excess of \$1,000 a month? A. No.

Q. Did you ever discuss any figures with him? I mean in excess of \$1,000 a month? A. No.

Q. When was the first time that you learned that the figures that you were to be asked to agree to were to be in

excess of \$1,000 a month? A. Only when I received the lease from you, and the letter.

Q. And that was about September 10th, a few days before? A. About four days before the 15th.

Q. And in all these conversations you had with
99 Mr. Goda, he never once mentioned that he wanted figures higher than the \$1,000 which you— A. (Interposing) No. He had mentioned other offers that he was getting from other people.

Q. You deny ever offering him any figure in excess of \$1,000? A. That is correct.

Q. Now, you received this letter from me about September 10, or September 12, 1945? A. Just about four days before the 15th, Mr. Kelly.

Q. And it was then that you went to see your attorney, Mr. Stern? A. No, the following day I went to see Mr. Goda and I asked what the meaning of that was, and he said the letter is self-explanatory you are to have these leases back by September 15th, and when he would not even talk to me, no discussion at all—

Q. (Interposing) You went to see Mr. Stern. A. Correct.

Q. Did you tell Mr. Stern that Mr. Goda had represented himself as owning all the stock of the corporation? A. Yes.

Q. Then you and Mr. Stern came to my office on September 15, 1944.

Is that correct?

100 A. That is correct.

Q. And as I understand your direct testimony, you wanted to discuss figures and Mr. Goda threw up his hands and "Sign this or not"? A. Correct.

Q. There were some other matters that transpired in my office that day? A. Yes, there was.

Q. Specifically, can you mention it? A. There was a question about handbags.

Q. Who brought that up? A. I did. Mr. Stern brought that up.

Q. What did he want about handbags? A. Simply this: I did not see any provision for the sale of bags and he said: Is it true, Mr. Goda, the boys are selling bags?

He said: Yes; I have no objection, I have no objection to having the provision in the lease, because on my suggestion I asked them to sell bags, and they have sold bags, and I did not object to that.

He said: That is perfectly all right to put in the lease.

Q. Did Mr. Goda state that in my presence? A. Yes, in your office.

Q. And a letter was drawn to Sekulow Brothers, signed by Mr. Goda, giving Sekulow Brothers permission
101 to display handbags? A. Correct.

Q. There was another letter also that day? A. Yes.

Q. Which was the second letter, now. A. The second letter, I think, was the letter from the landlord.

The Court: These letters are in evidence and speak for themselves.

Mr. Kelly: I wanted to find out who the suggestion came from.

By Mr. Kelly:

Q. Whom did the suggestion come from about the landlord? A. Mr. Stern, my attorney.

Q. As a result of his suggestion, was the letter from the landlord produced and attached to the lease? A. That was only after Mr. Stern had asked to see Mr. Goda's lease, which Mr. Goda jumped up excitedly and said he won't agree to that, and Mr. Stern asked: How about the acceptance on the lease by the owners of the property, and Mr. Goda said: No, I won't agree to that either, because I don't want the landlord to know all my business.

And I believe you spoke up and said that you anticipated something like that, knowing Mr. Stern, and knowing that Mr. Stern and I were coming over, and you had a letter from the owner of the property and, with our permis-

102 sion, would it be all right if that was made a part of the lease.

That was the letter from the owner.

Q. And that letter from the owner was attached to the lease at the suggestion of Mr. Stern, was it not? A. Yes, after you said whether that would satisfy us.

Q. And there was a third letter about recording the lease also attached, was there not? A. No, there was not. If I remember correctly, Mr. Stern insisted that the lease be recorded.

Mr. Hill: I suggest that the witness be shown the letter.

The Court: I do not see, Mr. Kelly, what you are driving at.

Mr. Kelly: What I am coming to, your Honor, is the fact that this man was there with his attorney, and that is something that has a lot to do with whether he was defrauded.

The Court: He has said that he was there, and Mr. Stern was there, and, presumably, as a consequence of his visit with his lawyer there, these letters were drawn, and they are in evidence and they speak for themselves.

Mr. Kelly: Very well.

By Mr. Kelly:

Q. Mr. Sekulow, did you know on September 15th when you came to my office who the owner of that building was? A. No, I did not.

Q. Well, you did know when you got the letter attached to the lease. A. At your office.

Q. Yes. A. Yes. No, we did not know then. The only time we knew who the owner was, was after the leases were recorded, and we got a copy of Mr. Goda's lease.

Q. Did you see that letter? A. That was at your office, this letter—did I see this letter?

The Court: Just a minute. You sit back and relax. Just take things a little bit easy.

The question was: Did you see that letter at that time?

The Witness: I could not say that I did, your Honor. I remember seeing it in Mr. Kelly's office.

The Court: That is not the question, whether you remember seeing the letter in Mr. Kelly's office. The question is: Did you see that letter at any time—you have seen it now?

The Witness: Yes.

The Court: That is excluded.

The Witness: Yes.

The Court: Have you seen it prior to now?

The Witness: No, I did not, prior to that. I did not see it.

This is the first time I have seen this letter.

104 By Mr. Kelly:

Q. Mr. Sekulow, did you ever make any effort during the time you were up there as a tenant to ascertain who the owner of that building was? A. I do not quite get your question. Will you repeat it?

Q. During the time that you were up there as a tenant, did you ever attempt at any time to ascertain who the owner of that building was? A. No.

Mr. Kelly: Your Honor, at the taking of Mr. Sekulow's deposition, I went into his business background. Mr. Hill objected to it.

I stated then and I offer now to question Mr. Sekulow as to his business background inasmuch as he alleges fraud, misrepresentation and undue influence.

I believe he should be inquired of as to that.

The Court: I take it that he is in the hat business in Baltimore and leases other property.

By Mr. Kelly:

Q. How many stores do you operate, Mr. Sekulow?

Mr. Hill: I have no serious objection, other than the question of the record.

It probably won't take long, but it is not material.

The Court: It won't help me. I am going to draw an inference that this man and his brother have been in
105 business, presumably, some little time, and in the

business of being makers of and distributors of a certain line of hats and, therefore, have had experience in leasing property and buying and selling property.

Mr. Kelly: That is all.

The Witness: May I see that letter that Mr. Kelly had asked me whether I had seen that letter before—is that the letter signed by me?

The Court: You will get high blood pressure if you don't be careful. Just take it easy. You mean the letter about the handbags?

Mr. Kelly: No, it was the letter about Henry Schaffert owning the building.

Mr. Hill: It is the very last letter.

(A document produced by counsel was examined by the witness.)

The Witness: From what I recall, this letter was made part of the lease.

The Court: It is not what you recall with reference to what happened. The question is: Have you seen it before?

By the Court:

Q. Did you see that letter at the time the lease was signed? A. Wait a minute. Of course I did. I seen it. My signature is right on there. Sure, I must have seen it.

Mr. Goda's signature is on there too.

106 Mr. Kelly: I was not trying to trick you—

The Court (interposing): Wait a minute, please.

I can well understand your feeling in the matter, but please remember that Mr. Kelly is not a party to this litigation any more than any other counsel is.

For the purposes of the record, this letter is on the stationery of one Henry Schaffert, 942 I Street, Northwest, Washington, D. C., and it is dated September 15, 1944, addressed to George Goda, 604 Eleventh Street, Northwest, granting permission for him to sublet such portions of premises 604 Eleventh Street, Northwest, to Sekulow Brothers, for a term not to exceed the expiration date of your

lease with us for the premises, namely, September 30, 1950, as you may desire.

That is signed by Henry Schaffert in his representative capacity and presumably witnessed or endorsed by both George Goda and Jack Sekulow.

By Mr. Kelly:

Q. Mr. Sekulow, how often were you accustomed to coming to Washington from the period that you started to negotiate this fourth lease with Mr. Goda, which was March or April, 1944, until it was signed in September, September 15th—how often? Was it once or twice a week? A. I would say twice a week.

Q. How often during that period would you estimate you saw Mr. Goda? A. I actually—every time I would be over, every week I would be over, I more or less ran in to see him.

Q. Is it not true that almost every time you saw him in that period you had a conversation with him about renewing your third lease? A. Not always.

Q. Would you not say it was more than two or three times? A. No, I would not, Mr. Kelly.

Q. Now, you mailed in March, 1945, to Mr. Goda, and also a letter to the 11th & F St. Valet, Incorporated, purportedly denying the lease of September 15, 1944, and seeking to renew lease number 3—you know the letters I refer to; Mr. Hill put them in a while ago.

Those letters are on the stationery of Sekulow Brothers.

Those are the letters that I referred to in my question (handing certain documents to the witness, who examined them).

These were sent in March? A. March 12.

Q. 1945? A. Yes.

Q. That was about six months after you executed this fourth lease, was it not, with Mr. Goda? A. Six months? I don't get your question.

Q. Do you recall when lease number 4 was executed? A. Yes. We executed that on September 15.

Q. What year? '44? A. Yes.

Q. This is March 12, 1945? A. Yes.

Q. And that is six months after September 15, 1944, is it not? A. Yes, of course.

Q. Can you tell me why you waited from September 15th or September 20th, when you got the leases back from the Recorder of Deeds' office, why did you wait from September 20, 1944, to March 1945, to attempt to avoid the burdens of this lease that you are now operating on? A. It took that time to have that lease recorded.

You had the leases at your office and you said that you were going to have them recorded.

Q. Don't you remember your direct testimony this morning to the effect that the first time that you knew Mr. Schaffert was the owner of the building was about September 20, 1944, when you received the leases back from the Recorder of Deeds' office—it was then that you first realized that you had been—I believe you said—defrauded, or hoodwinked.

Do you recall that this morning? A. I recall that, yes.

Q. You must have gotten them back about September 20, 1944, from the Recorder of Deeds' office. A. It must have been.

Q. My question now is why did you wait until March 12, 1945, to do anything about it? A. Why I waited until March 12, was your question?

Q. That is right. A. Well, my brother had been in the service at that time. He got out in November.

Q. He got out in November? A. October or the latter part of October.

Was not that the lapse of time from the leases to be recorded—that was on March 12; this letter was written, and I cannot even recall that letter.

The Court: In any event, he wrote it.

Mr. Kelly: Very well.

Mr. Hill: Yes.

Mr. Kelly: That is all.

Redirect Examination

By Mr. Hill:

* * * * *

110 Q. Now, with respect to your course of action, prior to making this lease in September 1944, was the matter then in the hands of your attorney? A. No, it was not. We had signed the leases at Mr. Kelly's office on September 15, 1944.

Q. When did you ask your attorney to go into the matter, Mr. Stern? A. After we had seen a copy of Mr. 111 Goda's lease with the owner.

Q. Now, approximately how long after that? A. Oh, I would say possibly a month or two.

By the Court:

Q. You had never consulted counsel with reference to any of these matters up until that time.

Is that it? A. That is correct, your Honor.

Q. And the arrangement between you and your brother was a partnership.

Is that correct? A. That is correct, your Honor.

* * * * *

Mr. Hill: I will call Mr. Abraham Sekulow.

Mr. Kelly: May I inquire of Mr. Hill what he proposes to prove by Abraham Sekulow?

I suggest that for this reason: If he can tell me what he wants to prove I may stipulate it, or if he says what I believe he will, I may even then move your Honor for a directed verdict, and if I am overruled, put Mr. Goda on.

I thought in the interest of time it would perhaps be the time to make the suggestion.

112 The Court: I assume that this gentleman is going to be corroborative of what his brother said.

Mr. Hill: It is corroboration, of course. Of course, too, he was not present at the execution of the fourth lease. But, down to that point, it will be corroborative. I think, pos-

sibly, it will be a little more definite with respect to the trip back from Baltimore to Washington to see Mr. Goda at the time he was asked what he meant by this provision "provided the lessor remains as a tenant."

The Court: It seems to me that the gist of this case is whether or not there was fraud and inducement in the execution of the fourth lease.

The parties had been dealing with each other previously, antecedent to the drawing of the fourth lease.

The only question before me is whether or not the execution of the fourth instrument was induced by fraud on the part of Mr. Goda. If that is so, the instrument would fall, and the parties would go to the third lease.

Am I correct?

Mr. Hill: I think you are substantially correct, with this modification: it is important also to know what the rights of the plaintiff are under the third lease.

The Court: Yes.

Mr. Hill: And I think as the lease was drawn by the defendant and his attorney, and these parties at that
113 time had no attorney, it is important to show just what representation was made by Mr. Goda with respect to this clause when he was asked about it.

The Court: Is there any question about the clause in the third lease?

Mr. Hill: It is there.

The Court: There is no question as to how it got there. It arrived there, presumably, by agreement of parties.

Mr. Hill: No, it was never put in there by agreement of the parties.

The agreement as drawn contained that clause in there.

That clause provided that he remain as a lessee, but it was never discussed by the parties until Mr. Abraham Sekulow, in going over the lease in Baltimore, observed that clause in there.

The Court: But the instrument was executed with that clause in it.

Mr. Hill: Yes, it was.

The Court: After discovery and after knowledge of the fact by the parties that it was in there.

Mr. Hill: Yes.

The Court: You do not allege any fraud in that manner?

Mr. Hill: No, your Honor.

The only thing is, I want to corroborate and make more certain as to the statements Mr. Goda made at the time that was discussed. He said that would remain in there,
114 and you can renew, and that it was only put in there in case something beyond his control should happen.

If there is no material issue as to the other part, I won't ask about the other portion of the testimony.

Mr. Kelly: If you will limit it to that, we won't waste much time. I will move for a verdict on that.

* * * * *

Abraham Sekulow was called as a witness for and on behalf of the plaintiffs

* * * * *

Direct Examination

By Mr. Hill:

Q. Mr. Sekulow, state your name, please. A. Abraham Sekulow.

Q. And you are the brother of Jack Sekulow? A. Yes.

Q. And one of the partners of Sekulow Brothers? A. Yes, sir.

Q. You have heard Mr. Jack Sekulow's testimony with respect to the making of a lease, lease number 1 and lease number 2.

Did you take any part in these leases at all?

115 A. I did.

Q. Did you take the part in the leases that he testified to? A. I did.

Q. When we get to lease number 3, he has testified that it was signed by him in Washington and he took it to Baltimore. A. That is correct.

Q. You examined it? A. I examined it in Baltimore.

Q. Tell us what you observed about it. A. Upon reading the lease, the first thing we noticed was the fact, the provision whereby we have a right to exercise our option after the three years only in the event that the 11th & F St. Valet remain tenants.

Q. What if anything did you and Jack Sekulow do after that? A. Well, we were amazed at the fact. We found that the 11th & F St. Valet was not a tenant, and we immediately decided to go to see Mr. Goda about that.

Q. That is the first time that you learned that the 11th & F St. Valet was not a tenant, or, I mean, was a tenant, and not the owner? A. That is correct.

Q. What did Mr. Goda say when you asked him about that? A. When we saw him at 604 Eleventh Street,
116 in his office, and his living quarters on the fourth floor of the premises—

Q. He lived on the premises? A. Yes.

Q. Was the second and the third floor rented? A. The second and the third floor were rented; yes, sir.

Q. And you occupied the first floor? A. That is right.

Q. What did Mr. Goda say? A. Mr. Goda said, after we brought that up to him, Mr. Goda hesitated a few moments and he said: There is really nothing to worry about. It is true I am a tenant. I have a ten-year lease. And he said, he turned at that time to my brother Jack, and he said: Jack, after all, you are my friend. I would not do you any harm. My word is my bond. As long as I am here you can stay as long as you want to.

I said: Mr. Goda, if that is the way you feel about it, why put the clause in the lease?

He said: I am only putting the clause in the lease in the event something happens beyond my control.

We also mentioned the fact that we noticed there was a provision omitted about Mr. Goda having to supply the light, heat, and air conditioning.

Mr. Goda said that he did not ever recall agreeing to anything like that.

We told him that in the prior leases—and we agreed
 117 that this lease called for the same provision, and, to
 prove it to him, we had the lease prior to that to
 show him the clause that called for Mr. Goda to supply the
 particular items, like the heat, light, and air conditioning,
 and he said: Well, all right. I will take this particular par-
 agraph and cut it out of this lease and attach it to—

Q. (Interposing) Number 3 lease? A. From the num-
 ber 2 lease to the number 3 lease, and the second lease to
 the third lease—that is correct.

Well, with those assurances, after that I felt there was
 nothing to worry about, and I added my signature to the
 lease.

* * * * *

Cross-Examination

By Mr. Kelly:

Q. Mr. Sekulow, how long has Mr. Stern represented the
 firm of Sekulow Brothers? A. Well, Mr. Stern has done
 some work for us on and off—no, he don't do any work for
 Sekulow Brothers, he actually did work for Jack Sekulow,
 and some personal matters, as far as his home is concerned
 —Jack Sekulow bought a home.

Q. Well, at the time that this third lease was negotiated,
 the firm was your regular attorney? A. No, sir.

Q. You did not see any attorney about the third lease?
 A. No, sir.

118 **Gilbert J. Stern** was called as a witness for and on
 behalf of the plaintiffs

* * * * *

Direct Examination

By Mr. Hill:

Q. Will you please state your name? A. Gilbert J.
 Stern.

Q. You are an attorney practicing in Baltimore City? A.
 That is correct.

Q. In September 1944, did Mr. Jack Sekulow confer with you with respect to the matter of a lease between Sekulow Brothers and Mr. Goda? A. Yes, sir.

Q. Of the 11th & F St. Valet, Incorporated? A. Yes.

Q. Tell us, if you will, please, in your own words, just what took place. A. He came to my office. It must
119 have been either on the 12th or the 13th of September, and I fix that date because I know it was either two or three days before the date of the ultimatum you have spoken of on the 15th.

He brought with him a letter from Mr. Kelly, addressed to Sekulow Brothers, in which the present lease, number 4, both copies of it, were included.

He was very much agitated, and he said it came to him as a complete shock and a surprise—

Mr. Kelly (interposing): I object. That is a self-serving declaration. Mr. Goda was not present.

The Court: Well, I imagine it did come to him as a shock. Let it stay.

The Witness: He told me that he had had certain conversations with Mr. Goda sometime prior to his seeing me, but that Mr. Goda had broken off all further conversations and, apparently, intended to have no more business relations with him, and that was why he was so surprised to receive this, and that he had, the day before, been receiving this letter and these leases, which would be on a Monday, because he came to Mr. Goda on Friday, and he had gone over to see Mr. Goda, and he asked him what he meant by the terms of this lease, and the sending of it all together, and he said that Mr. Goda refused to talk to him, and that the letter was self-explanatory, and that he would have to sign by the 15th, or else.

He asked me whether I could obtain an extension
120 of time in which he could act on this, because of the fact that, coming out of a clear sky like this, he had not had a chance to consult with his brother who was in the Army.

We told him that in the prior leases—and we agreed
 117 that this lease called for the same provision, and, to
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He asked me whether I could obtain an extension
120 of time in which he could act on this, because of the fact that, coming out of a clear sky like this, he had not had a chance to consult with his brother who was in the Army.

I called Mr. Kelly, and Mr. Sekulow was on the extension telephone line in my office, and asked him whether we could get a postponement. He said that he had no authority over that, that the matter was entirely in the hands of Mr. Goda, but his instructions were clear and definite, that the lease would have to be signed by that date, or else, and he was sorry he could not accommodate us, whereupon I made an appointment with him for a certain hour—I don't recall exactly what hour it was, on September 15, Friday.

By Mr. Hill:

Q. And you kept the appointment? A. Yes.

Q. Tell us what occurred in the conference? A. Well, I went to the conference.

I had not been able to ascertain from my client any facts concerning the background of the matter. I had no idea whether the 11th & F St. Valet, Incorporated, was a tenant directly with an owner or who the owner was or anything else. All I knew was the threat that had been delivered to Mr. Sekulow, as he described it to me, that Mr. Goda was making a new lease other than the 11th & F St. Valet, and I saw the lease was in the name of Mr. George Goda himself.

121 Q. When you say that the lease was in the name of George Goda— A. (Interposing) That was the first lease; that was in the name of George Goda and all the others were 11th & F St.

Q. The fourth lease? A. The fourth lease.

I was also faced with the fact that if he did not sign it there was a possibility if he carried out his threat that there may be an intervening right of some third party who, in good faith, entered a lease with Mr. Goda, and my people would have a lawsuit rather than a place of business.

When we got to the office, I recall this very clearly, I just sat down and was opening up my briefcase, after introductions had been passed, and I said to Mr. Goda that there were a few things that we would like to discuss about this lease.

That is as far as I got in words out of my mouth, when Mr. Goda jumped up, and he was sitting beside the desk, and Mr. Kelly was sitting behind, and I was opposite Mr. Kelly and Mr. Sekulow was beside me, and he jumped up, furiously, and he said: The first thing I want to know is: Is there any question about the rent?

If there is any question whatsoever about the rent, then there is no purpose of having any further discussion, and he turned to Jack Sekulow and said: Is there any question about the rent?

122 Mr. Sekulow said to him: Well, Mr. Goda, if you put it to me that way, you leave me no alternative.

He said: All right. Assuming I agree to the rent, we would still like to discuss some things about it.

Mr. Goda said—well, he sat down and he said: Well, in that case, I will listen to whatever you have to say.

I then asked Mr. Goda, I said: Mr. Goda, we would like to see your lease with the landlord.

I intended to give him my reasons why I wanted to see the lease with the landlord, but he did not give me a chance. He said: No, that is out.

He said: I won't show you that lease. And he went on to say, as a matter of fact, he did not have it with him, but if he did have it with him he would not show it to me.

Well, then I said, I am not too positive of your recording laws in the District of Columbia, but I would like to know whether a lease is to be recorded. I want our lease recorded, but, before doing that, would like you to get the landlord to sign an acceptance of our lease on this new lease that you are offering us.

He refused that.

He said he did not want the landlord to know his business, or us to know the landlord, and vice versa, but Mr. Kelly spoke up at that point and he said I think your reason for your request is very reasonable, and he said, I
123 anticipated, since I found out that Mr. Sekulow was coming over with his attorney, that there might be

some such request, so we have had a letter prepared by the landlord.

Q. This is Mr. Kelly that is still speaking? A. Mr. Kelly is still speaking, and he said: Do you have it, Mr. Goda?

And Mr. Goda removed it from his pocket, and handed it to Mr. Kelly.

Q. And that is the letter attached to the lease in evidence? A. That is the letter attached to the lease in evidence.

Mr. Kelly said: If this is attached to the lease, won't that be satisfactory? Won't that answer the same purpose?

I said: As long as he would not let me see the lease, did not want the men to know about his business, I guess we would have to take that.

I did ask Mr. Kelly to retire with me from the room and I asked him some questions about the recording laws, and we returned, and it was agreed that it be attached to the lease if we signed it, and it would be recorded with it.

Then the question came up about the second floor, whether Mr. Sekulow or myself first mentioned it, I don't know, but we told him that we had no use for the second floor and we did not want it.

Well, he said, his health was not so good. He liked
124 to Florida and so forth, and he did not want to be worried about any lease, and he did not have to, and if he had a lease on the third floor—he thought maybe the people would not move from there, but if they did he would not be bothered about renting it, and we had to assume the obligation for the second floor, and if not, he would not sign the lease.

Then the question came up about the handbags.

I told him that I understood Mr. Sekulow or Sekulow Brothers had been selling handbags for some time and it was perfectly all right with him, and he said it was always his purpose to see that they did as well as possible; he was very friendly with them and he had no objection, and

Mr. Kelly went out to dictate a letter to that effect to the stenographer.

Q. And that is attached? A. Yes, and as it was finished, before it was taken out of the machine, he called me to look at it to see if it was satisfactory, and when we came back in the room Mr. Sekulow and Mr. Goda were discussing something about air conditioning, not getting it right, and the gas not being available, and he said that he would see that it was handled properly, and so forth, and then I told Mr. Kelly: Now, this is all out of the way. But, before we even sign, there is just one thing that I do insist upon: You have been refusing it at every turn, to discuss the lease by Mr. Goda with his landlord, and we will sign it only on condition that you agree to record the present lease
125 number 4, plus Mr. Goda's lease with the landlord, and I was perfectly willing to take Mr. Kelly's word for it, and he suggested that as long as everything else was in writing, we might as well have a notation to that effect and attach it to the lease.

Q. And that was done? A. And he offered to record it.

He asked Mr. Goda whether he had the lease with him. He said no, he did not have the lease with him, but it was at his place, and I suppose he meant 604 Eleventh Street, and he promised to have it in the next day or so to record.

Then, just before the signing, Mr. Kelly asked me whether Mr. Jack Sekulow had any power of attorney from Mr. Abraham Sekulow, and I told him that he did not, and he said: Well, it will be satisfactory, or we agreed that Jack Sekulow sign first for himself and then for his brother, and we left the leases with him to be recorded.

I had inquiry made, and I had several inquiries made, and one day Mr. Sekulow was in to see me to see if there was any recorded lease on this property, and I had a local Washington attorney to search the record for me, and he told me he found no lease recorded either with Goda or the 11th & F St. Valet or anyone else for that premises or for that particular location.

Then, after I felt a sufficient time had gone by in which the lease might be either obtained from the Recorder's office or gotten off the record, I made inquiry of Mr. 126 Kelly, and he told me they would be ready to come off the record shortly, and when they were we could get, not a certified copy, but we had an attorney make a copy of Mr. Goda's recorded lease, and I received it in the mail, and I called Jack Sekulow, and his brother was still in the Army, and I showed him the lease and, needless to say, he became furious when he saw it.

That was probably sometime in the early part of October. He wanted to do something right away about the matter, but we decided to wait until his brother came out of the Army, and when he did, we gave it a great deal of study, and thought, and so forth, and the delay in sending that letter was not due to Mr. Jack Sekulow's action in any way but probably due to mine in giving it a great deal of thought, wording the letter, and so forth, before we sent it in March, which was still three or four months before the expiration of the lease, I will point out.

Cross-Examination

By Mr. Kelly:

Q. Did Mr. Jack Sekulow tell you that it was his information that Mr. Goda owned all the stock of the 11th & F St. Valet, Incorporated? A. No, he never told it to me in those words.

He told me—I asked him if he knew what the setup of the 11th & F St. Valet was, and he said he thought Mr. 127 Goda controlled it, but he had no idea of the holding of stock, or what percentage it was.

Q. Mr. Stern, to refresh your recollection as to when you received the recorded leases from me, will you look at this copy of that letter (handing a paper writing to the witness)? A. (After examining the document last referred to) Well, that is when I received your lease.

This is the lease in controversy, but it was not until after that that I received the transcribed copy of Mr. Goda's lease with his landlord.

Q. Would you say early in November? A. I would say the latter part of October, probably, I would say.

It was, I believe, just before Mr. Abraham Sekulow came back from the Army.

Q. Mr. Stern, did you ask this Washington attorney to ascertain who the owner of the building was? A. No, I did not have time for that. I was consulted on the 12th.

By the Court:

Q. Your answer is "no"? A. Yes.

By Mr. Kelly:

Q. Do you have any idea of the procedure we use in the District of Columbia calling for ascertaining who the owner of a building is? A. No, sir.

* * * * *

Mr. Hill: If your Honor please, it may be stipulated by agreement of counsel that during the time of the negotiations, 1944, that the second floor was leased out at \$300 a month, and the third floor was leased out at \$150 a month.

Mr. Kelly: I will stipulate that only if it is material.

I do not see the materiality of it at all.

Mr. Hill: I believe I made an error in that. If the Court finds it is material.

The Court: I do not think it is material.

I will be glad to hear you if you want to make an offer.

Mr. Hill: I do wish to make an offer. The materiality of it is this:

Maybe it should go in later, perhaps, or perhaps I should call Mr. Goda to show this.

He stated time and again that he would not renew the option because he was not making enough money when he had to pay out money and the money that he received, the spread was too small—I think it important to show that that was a misrepresentation and a concealment.

129 Maybe I should call Mr. Goda first to prove that.
 Mr. Kelly: I object to that again on the ground of
 irrelevancy.

 Mr. Goda was out to get all he could. He was out to save
 all he could save, and he was out to get all he could get.

 Mr. Hill: We were completely in the dark and had no
 idea what he was paying at all, and here is a man who
 knows all the facts.

 The Court: I will exclude it.

 Mr. Hill: And you will allow me an exception?

 The Court: Yes.

* * * * * * * * *

Cross-Examination

By Mr. Kelly:

Q. Mr. Stern, referring your attention to the so-called
 release which is written on the bottom of lease number 3,
 do you recall whether or not it was at your suggestion that
 the last phrase was added "including the supplement
 thereto"? A. I recall that the whole idea of the release
 was your idea, not mine, Mr. Kelly.

Q. Did you have anything to do with the wording
 130 of it, if you recall? A. No, sir.

Mr. Kelly: Well, that is all.

* * * * * * * * *

Mr. Hill: That is our case, if your Honor please.

The Court: Well, now, I might say at the outset that
 upon the basis of the evidence in the record at the present
 time, I am not over-impressed with the plaintiffs' case.

You have here not men unskilled in affairs of this kind.
 You have two businessmen, two brothers, who presumably,
 I draw the inference—if I am incorrect, counsel will cor-
 rect me—are engaged in business of some moment in the
 City of Baltimore and in the City of Washington, and, like
 a lot of individuals, they presume to act without counsel and
 get themselves involved in a situation and then try to extri-

cate themselves by going out the back door when the business could have been conducted properly by competent counsel.

Counsel did not come into this case until sometime after September 1944. Mr. Stern came in and he was confronted with the situation of trying to "pull the ocean out".

I see nothing involuntary about anything that Mr. Sekulow did.

True, from the standpoint of business, Mr. Goda was driving as hard a bargain as he possibly could. I see no fraud in the picture, as I understand the law. I see nothing that, at that time, would have prevented them from extricating themselves from the situation in which they found themselves.

Long before the expiration of any of the leases, they are importuned or they are doing the importuning, I should say, in a desire to have the lease renewed, and of that Goda took advantage.

Both tried to get advantage of the other.

That is the way I look at it.

However, there is one important aspect of the case that is not clear to me as yet, and that is that Schaffert, trustee, on the 29th of August, 1940, leases the property, the whole building, at a certain rental to Goda with a provision in the lease that Goda will not assign or subrent the premises without the written consent of the party of the first part.

My question now is: What authority did he have to sublease? There is no evidence of any such authority except in connection with the last lease.

Mr. Kelly: May I answer that?

The Court: Yes.

Mr. Kelly: Further out in that same lease he is given the power to assign it to a corporation.

The Court: The lease says that he will not assign or sublet.

Mr. Kelly: On the first page.

Mr. Hill: Down at the bottom.

132 The Court: That goes further and says that if he assigns that, presumably the corporation cannot—in view of the other provisions of the lease which are still applicable—the corporation could not sublet without the permission of the trustee.

Mr. Hill: Your Honor, on that point, it seems to me that certainly Mr. Goda cannot take advantage of that provision. The lease has been running now over five years. It is perfectly apparent that he has waived that provision of the lease and has ratified it.

The Court: I am not addressing my remarks from the standpoint of Mr. Goda. He had authority, presumably, to sublet by virtue of the instrument, by way of the letter subsequently incorporated in the lease of September 1944.

Mr. Hill: Yes.

The Court: I only raise the question with reference to the authority of anyone to deal with the property at all in the absence of compliance with the provision of the lease.

I realize that you gentlemen have done all you can do under the circumstances in which you find yourselves.

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134 **George Goda**, was called as a witness for and on behalf of the defendants

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135 Direct Examination

By Mr. Kelly:

Q. Mr. Goda, all of the leases are now in evidence, so I will refer to them by number.

You made your first lease with Mr. Schaffert, in October 1940? A. In August—no, the 13th of October.

Q. When did you incorporate the 11th & F St. Valet? A. The 26th of December, 1940.

Q. That was before you made the first lease with Sekulow Brothers? A. Yes.

Q. And the lease from George Goda, an individual, was assigned to the corporation at about that time?

By the Court:

Q. You say it was incorporated when? A. 1940; December 26, 1940.

Mr. Kelly: Which was before he made his first lease to Sekulow Brothers.

The Court: All right.

By Mr. Kelly:

Q. And you assigned your personal lease to the corporation at the time it was incorporated? A. Yes.

Q. Now, Mr. Goda, referring further, now, to the
136 third lease, that is the first lease of a flat rental basis,
can you tell his Honor the circumstances leading up
to that, to the execution of the third lease? A. The execu-
tion of the third lease with the flat rental?

* * * * *

Q. Under what circumstances was the third lease drawn up?

Tell us as nearly as you can who drew up the third lease and the circumstances connected with it. A. You drew up the third lease, Mr. Kelly.

Now I want to tell you—

The Court (interposing): He drew the lease.

Don't volunteer anything.

By Mr. Kelly:

Q. Had you had several conversations with Mr. Sekulow about the terms of the third lease before I drew it up? A. Yes.

Q. How many conversations did you have with him? A.

Oh, several times.

137 Q. Do you recall where the third lease was signed?

A. Two months after.

Q. That is when it was signed. A. That was signed in either August or September.

Q. Of '42? A. Yes.

Q. And it was dated July 1942? A. Yes.

Q. Why was it dated July 1942? A. On account of the original lease which was supposed to end on the 1st of July.

I gave up my business there the 3rd of July, so we re-dated the 1st of July, and they would pay the rent.

Q. Actually, the second lease was for one year, with an option to renew for four years?

Is that correct? A. That is correct.

Q. Now, if this option to renew for four years had been exercised by Sekulow Brothers, would that have taken you beyond the term of your original lease with Mr. Schaffert?

A. Yes.

Q. When the third lease was drawn, it was dated July 1st, 1942, to correspond with the one-year lease that they had? A. Correct.

Q. And this third lease gave them an option to re-
138 new for a period of five years? A. For a period of five years.

Q. Did you know anything about the clause in that lease which stated that they shall have the right to renew on the giving of thirty days' notice and providing further that the lessor remain as a tenant of the owner? A. I did not.

Q. Now, when Mr. Sekulow—pardon me for leading—approached you about the fourth lease, or the renewal of the third lease, in the spring of 1944—that is correct?

Mr. Hill (interposing): I think the question should be reformed; it was not the fourth lease, but the renewal.

Mr. Kelly: He started talking about the renewal of the third lease in the spring of 1944.

By Mr. Kelly:

Q. Is that correct? A. Right.

Q. Would you say that was March or April? A. Some-time about March or April.

Q. How many conversations did you have with Mr. Sekulow about the renewal of this third lease between the time he first approached you about it and the time you

actually released it and signed another lease in September? A. At least 25 or 30 times.

Q. And where did those conversations take place?

139 A. Either in the store, either at the street—we talked when we went down to the Peoples Drug Store, at the cafeteria, sat down and talked, and in my apartment we talked—oh, any time we came together.

Q. And when he first approached you, his original lease still had 14 or 15 months to run? A. That is right.

Q. What was your answer when he first approached you in March or April about a renewal? A. I just told him: We have plenty of time to talk about it.

Q. And when did you have plenty of time to talk about it? A. That was after several talks around July or August, 1945.

Q. Well, when did you tell him about the renewal, so far as the renewal at \$1,000 a month was concerned? A. There was no question about that.

I just told him that I did not believe I would renew my lease with Mr. Schaffert.

Q. Your lease with Mr. Schaffert? A. Yes.

Q. You did tell him that? A. I told him that. He knows that. I told him I did not make any money on that lease.

Mr. Hill: I did not get the answer.

140 The Witness: I told him I did not make any money on that lease.

By Mr. Kelly:

Q. You mean on your original lease with Mr. Schaffert for the first five years? A. Yes.

* * * * *

143 Q. Mr. Goda, after these several conversations with Sekulow, did there ever come a time when Sekulow suggested figures higher than \$1,000 a month for rental? A. Yes.

Q. When was that? A. I cannot recall the exact date; it was sometime in August, in my apartment.

Q. How much did he offer? A. He offered a considerably higher figure. We did not come to a direct figure, a stated amount.

Q. Mr. Sekulow has testified that the first notice he ever had that you were going to require \$850 a month for a certain period, and \$1,250 for another period, and \$1,400 for another period, was when he received a prepared lease from you about September the 10th.

Had you discussed those figures with Mr. Sekulow prior to my drawing the lease? A. Yes, sir.

Q. Did there come a time when you and Mr. Sekulow agreed on those figures? A. Absolutely.

Q. When was that? A. I cannot recall; sometime
144 in August.

Q. Sometime in August? A. Yes.

Q. And you also reached an agreement with Sekulow as to when the old lease would be released and the new one signed? A. It was definitely understood by us it would have to be taken up by September the 15th.

Q. Why did you insist on that date, September the 15th? A. I was not feeling good.

* * * * *

Q. Mr. Goda, after you reached the agreement with Sekulow as to the rental figures to be included in the fourth lease, what did you do after that? A. I went to your office.

145 Q. You went to my office? A. Yes.

* * * * *

Q. And did you tell me what the figures were? A. Right.

Q. Then did you come back in after I had the lease prepared and did you look it over? A. I think I did.

Q. And then, at your direction, I mailed it to Baltimore? A. Yes.

Q. Did you have any conversation with Sekulow seeking a postponement of the September 15th meeting? A. No, sir.

Q. And on September 15th they met in my office? A. That is right.

Q. What took place there? A. He signed the lease.

Q. Is what Mr. Stern said in his testimony on the stand about what happened in my office on September 15th? A. Correct.

* * * * *

Cross-Examination

By Mr. Hill:

Q. Mr. Goda, Sekulow did tell you that he wanted to renew the lease at \$1,000 a month? A. It was not a question of the money. He wanted to renew the lease.

Q. And at not to exceed \$1,000 a month? A. He wanted to renew the lease.

Q. And did you tell him— A. (Interposing) I was not ready to talk about it.

Q. And finally did you state whether you would or would not renew it? A. Yes, I did.

Q. Tell us what you said. A. Well, I told Mr. Sekulow that I did not believe I will renew my lease with Mr. Schaffert.

Q. Did you go any further than that? A. No, not that I recall.

Q. You did not tell him definitely that you would not renew it? A. No, sir.

Q. Do you remember, Mr. Goda, that at the time of taking your deposition I was examining you and my question was:

“Question: Did you give any further reason for not renewing the lease with Schaffert?”

147 And your answer was:

“Answer: That was a most important reason I gave him. I told him it would not pay me for me to enter on another lease on this proposition; I told him it would not pay me to renew the lease, that 11th & F St. Valet would not renew the lease.”

And I asked you:

“Question: You told Mr. Sekulow that 11th & F St. Valet would not renew the lease with Mr. Schaffert?”

And your answer was:

“Answer: That is right, because it was not a paying proposition.”

You answered that way? A. Yes; that is right.

Q. Because it was not a paying proposition? A. That is right.

Q. So you did tell him that you definitely would not renew the lease? A. At that time.

Q. And on page 16, getting back to your negotiations with Mr. Sekulow, we have this question:

“Question: Getting back to your negotiations with Mr. Sekulow, you told him that you were not making money, and did you say that you were not going to renew the lease?”

148 And you answered:

“That is right.”

And I asked you:

“Question: You said that you were not going to renew the lease?”

And you answered again:

“Answer: That is right.”

Then I asked you:

“Question: When did you tell Mr. Sekulow that you were not going to renew the lease?”

And you answered:

“Answer: That was in the month of August, or month of July.”

A. Right.

Q. So you did tell him that if he insisted on the exercise of his option you would not renew the lease? A. We did not come to that, sir; that was a year at least.

Q. On page 17 you were asked:

“Question: By that do you mean that if Mr. Sekulow insisted upon the exercise of the option in the lease, you would not renew the lease?”

And you answered:

"Answer: That is right."

Is that correct?

A. Yes, that is right.

149 Q. Because it was not a paying proposition? A. That is right.

Q. So you did tell him that you definitely would not renew the lease? A. At that time.

Q. And, on page 16, getting back to your negotiations with Mr. Sekulow, you told him you were not making money and, did you say that you were not going to renew the lease?

I asked you:

"Question: You said that you were not going to renew the lease?"

And you answered:

"Answer: That is right."

And I asked you:

"Question: When did you tell Mr. Sekulow that you were not going to renew the lease?"

And you answered:

"Answer: That was in the month of August, or month of July."

A. Right.

* * * * *

Q. So that if he insisted on the exercise of his option, you would not renew the lease with Schaffert? A. That is right.

150 Q. You would not continue to be a tenant if he continued to insist on the exercise of his option? A. Yes.

Q. And on page 18 you repeated that you told Mr. Sekulow that you would not renew the lease, and when I asked you about that you answered: "That is right."

The Court: This was when?

Mr. Hill: This was taken on November—

The Court (interposing): When did he tell Mr. Sekulow he would not renew it?

Mr. Hill: He said it was sometime during the month of August or the month of July, 1944.

The " '44" is not here.

By Mr. Hill:

Q. But you did mean during the month of July or August, 1944? A. Yes, before we came to the figure to renew.

By the Court:

Q. And you had not, as a matter of fact, renewed at that time? A. I beg your pardon?

Q. I say, you had not, as a matter of fact, renewed at that time? A. No, sir.

Q. When did you renew? A. I renewed it in the
151 early part of September, 1944.

By Mr. Hill:

Q. Now, on the question of renewal, attached to your lease with Mr. Schaffert is the letter from you to Mr. Schaffert, on Mr. Schaffert's stationery I believe dated September 7, 1944. A. That is right.

Q. And you did renew on September 7, 1944? A. That was after the arrangement and understanding made with Mr. Sekulow.

Q. But you did renew under that date, September 7, 1944? A. That is right.

Q. And prior to that you told him that if he insisted on the exercise of his option you would not renew? A. That is right.

Q. You did tell him that? A. That is right.

Q. Now, Mr. Goda, you stated, I believe, that Mr. Sekulow and you discussed some higher figures before you had this fourth lease prepared? A. Right.

Q. You did tell him that you had some higher offers? A. Right.

Q. You did not mean to say that he agreed to some higher figures? A. Definitely.

152 Q. Tell us where that was and when it was. A. That was right in my apartment.

Q. And when? A. Sometime during August.

Q. What is that? A. During the month of August.

Q. What time in August? A. I really cannot tell you.

Q. And what was the agreement? A. The agreement which was drawn up and signed September 15, 1944.

Q. Who was present? A. Mr. Sekulow and I.

Q. Mr. Jack Sekulow? A. That is right.

Q. Now, was that before or after your statements that you would not renew if he exercised his option? A. After.

Q. After you told him that? A. That is right.

* * * * *

Re-direct examination

By Mr. Kelly:

Q. You had renewed your lease with Mr. Schaffert on September 7th? A. Yes, sir.

153 Q. How long before that had you made the agreement with Mr. Sekulow, the verbal understanding, as to what this new lease would contain? A. Almost about thirty days.

Q. About thirty days before? A. Yes.

Q. And about September 8th you instructed me to send the lease to them, and that it had to be signed by the 15th? A. That is right.

* * * * *

154 **Jack Sekulow**, one of the plaintiffs herein, was recalled as a witness for and in behalf of the plaintiffs

* * * * *

Direct Examination (On Rebuttal)

By Mr. Hill:

Q. You heard Mr. Goda state that sometime probably a month prior to September 7th, he and you entered

155 into a verbal agreement with respect to the rent
in a new lease for these premises.

Is that correct or not? A. No.

Mr. Kelly: You already testified to that.

The Witness: There was no verbal understanding at all.

By Mr. Hill:

Q. Did you at any time prior to the executing of this
agreement on September 15th agree to these figures set out
in this lease of September 15, 1944? A. No.

Q. You did not? A. No.

Q. When Mr. Goda said that he would not renew the
lease, did he give you the name of the owner of the prop-
erty at that time? A. No.

Q. He just said that he would not renew with the owner?
A. He just said he would not renew the lease.

* * * * *

156 **Francis J. Kelly** was duly sworn as a witness for
and on behalf of the defendants

* * * * *

Direct Examination

By Mr. O'Connor:

Q. State your full name, please. A. Francis J. Kelly.

Q. And you are a practicing member of the bar in the
District of Columbia? A. I am.

Q. Directing your attention, Mr. Kelly, to about
157 September 1942:

At that time did Mr. Goda come to you to prepare
a lease? A. Yes, he did.

Q. And that lease was a lease that is marked "Exhibit
3"? A. That is correct.

Q. Will you explain to his Honor the conditions under
which that lease was drawn? A. Yes.

May I first say that leases numbers 1 and 2 were drawn
by Thomas J. Flynn, an attorney then associated with me;
he entered the Navy in the early spring of 1942.

When lease number 3 was about to be prepared, Mr. Goda discussed it several times, and finally gave me the terms that he and Mr. Sekulow had agreed to and stated that it would have to be antedated to July 1st because those negotiations had been going on for perhaps a month or two.

I told him to take the second lease which he had in hand, give it to the young lady stenographer in the office, Miss Sanford, and tell her what terms to put in it and what date to put in it, which she did.

I left the office at that time because I had to go to Court for some reason.

He told me that he would be at the office sometime in the next two or three days with Mr. Sekulow.

That occurred two or three days later, and then I
158 first met Jack Sekulow when I came in the office—I was a few minutes late for the appointment—they were sitting in my private office and I hurriedly read the lease which had been prepared and which is referred to here as lease number 3, and I noticed a mistake in lease number 2 had been corrected, and that mistake was that Goda had given Sekulow Brothers an option to renew four years, when, as a matter of fact, he himself had not renewed for the second five-year period.

That was corrected, but when I read the lease over I stated both to Mr. Sekulow and Mr. Goda that it could not be signed in that manner, because the corporation was binding itself to renew a lease with Mr. Sekulow and I did not know whether Mr. Goda would renew his lease with the owner.

The reason I stated that was that Mr. Goda had complained to me many times that he was not making money and I told him he should not bind himself to renew with these people at any figure when he did not know if he would renew his lease with the owner, and also I spoke of his health, and he was going to Florida.

I stated that another clause should be added to this renewal clause, and I interlineated in pencil, and I gave it

back to the stenographer and the interlineation read: "provided that they shall have the option to renew five years or giving thirty days notice, provided further that the lessor still remains as a tenant of the owner."

159 I had another reason for doing that, but I did not mention it at the time, though I will now, if Mr. Hill has no objection:

I had drawn a will for Mr. Goda a few months previous, in which he left his property to his brother and nephew in Hungary. We were at war. The corporation was the lessor. The corporation was Goda, and I had visions of Goda dying, and, as executor of his estate, I did not want to be tied up with having to renew a lease with people here and operate the business.

I was trying to avoid litigation and I thought Mr. Sekulow understood.

Q. Was Mr. Sekulow present? A. Yes, Mr. Sekulow was present.

I did not state about the nephew in Hungary.

Q. But you did state what you had said? A. Yes.

Cross-Examination

By Mr. Hill:

Q. This is a four-story building? A. Yes.

Q. You said that Mr. Goda was not making money out of it? A. Pardon me. I stated that he told me he was not making money out of it.

Q. Under this third lease, the option of renewal
160 on the first floor was \$1,000 a month? A. Yes, sir.

Q. And you knew that he had the second floor under a lease of \$300? A. I did not know what figure it was then.

Q. You do know it is \$300? A. I know it is \$300 now.

Q. And the third floor was leased at \$150? A. At the time we drew the second lease.

Q. In addition, talking about the fourth lease— A. (Interposing) You are not talking about what I am. I am mentioning about the renewal.

Q. The fourth lease—at the time the third floor was rented for \$150 a month? A. I think that is true.

Q. And the fourth floor was occupied by Mr. Goda? A. Yes.

Q. And under his lease he paid \$625 a month for the entire building for the first five years? A. I know that now.

Q. \$650 was his option, and not to exceed that for the next five years? A. Yes, I know that now.

Q. And at the time of the fourth lease you knew it? A. Yes.

Q. Now, getting back to the third lease, where was this third lease signed, you say? A. In my office in the Munsey Building. Oh, pardon me. I may be incorrect on that. That is where it was prepared, and I had a discussion with Mr. Sekulow.

It is my impression that I gave both of them copies of the lease and they signed them—whether they signed them there I cannot swear to that. They may have taken them or they may have been mailed to them.

Q. Your first statement was that it was signed in your office, but you may be mistaken about that? A. I may be mistaken about that, yes.

Q. May I show you the third lease, and the name of the witness to it—the witness was Mr. Goodman—he is in your office? A. No; if he witnessed it, it was not signed in my office.

Q. You think it was a mistake then, that it was signed in your office? A. Yes.

Q. Mr. Sekulow thinks you are also mistaken about your statement that you explained to him all about this.

Could it be that you are mistaken about him, that you are confusing a conversation you had with Mr. Goda and are confused about it to the extent that you think that you had it with Mr. Sekulow? A. Mr. Hill, I am very sure on that.

I am not sure that Mr. Sekulow understood me, but I know perfectly well that I am sure of the statement.

Q. Now, at the time that the third lease was pre-

pared, you were an officer of the 11th & F St. Valet, Incorporated? A. I think I was, sir.

Q. And a member of the board of directors? A. I think so, yes.

Q. I am not quite certain that I followed you on the testimony you gave with respect to the making of the third lease.

Was it already prepared when Mr. Sekulow came in? A. Yes, it was already prepared when he came in and it was laying on my desk. The girl prepared it from the second lease.

Q. Prepared it on a statement given her by Mr. Goda, and not Sekulow? A. That is correct.

Q. And it was turned over to Mr. Goda and later on executed? A. Mr. Goda had already told the young lady what changes to make in the second lease. That was done. It was on my desk. I read it over and I just thought that inasmuch as Goda had not renewed his lease with Schaffert, and may not want to renew his lease with Schaffert, that he should not bind the corporation and himself to renew with Sekulow when he did not know in three years he would want to renew.

163 Q. When Goda came in and gave you the information, did he come in alone or with Sekulow? A. No, I think alone, because the first time I met Sekulow was at the conversation I just related.

Q. And when Mr. Goda came in the first time, he gave you the information in respect to the preparation of the lease, and it was already prepared when Mr. Sekulow came in? A. Yes, it was already prepared when Mr. Sekulow came in, and I said it had to be done all over.

* * * * *

Jack Sekulow, one of the plaintiffs herein, was again recalled as a witness in rebuttal

* * * * *

Further Direct Examination (In Rebuttal)

By Mr. Hill:

Q. You heard Mr. Kelly's statement to the effect that when you came to his office and the third lease was
164 turned over to you, that he discussed this option clause and brought to your attention that the clause provided that the option could be exercised if the Valet Shop continued as a tenant.

Do you recall whether that did take place? A. No, I cannot say that I do.

Q. Would you say that it did not take place? A. I know that it was not called to my attention at all.

Q. When was the first time it was brought to your attention? A. Back in Baltimore, when I had taken back the lease.

Q. It was brought to your attention by your brother? A. Yes.

BRIEF FOR APPELLEES

IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9432

JACK SEKULOW and ABRAHAM SEKULOW, a partnership,
trading as SEKULOW BROS., *Appellants*,

v.

11TH & F ST. VALET, INC., a corporation, and
GEORGE GODA, *Appellees*.

Appeal from the District Court of the United States for the
District of Columbia.

*United States Court of Appeals
for the District of Columbia*

FILED FEB 6 1947

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GEORGE GODA, *Appellees*.

Appeal from the District Court of the United States for the
District of Columbia.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

Inasmuch as the controversy between the parties centers around the execution and subsequent release of Lease #3, appellees (defendants) will commence at that point. Sometime in July, 1942 plaintiffs and defendant, Valet, Inc., entered into a lease for the first floor and basement of prem-

ises, 604-11th Street, Northwest, for a term of three years (App. 13), with a renewal privilege at not more than \$1000 per month "provided that the lessor still occupies the premises as a tenant of the owner." Goda was a sublessor and had never stated that he was the owner of the building and none of the prior leases named Goda or Valet, Inc. as the owner (App. 65). The parties discussed the above-quoted proviso in the renewal clause prior to the final execution of Lease #3 (App. 39, 79, 80) and the plaintiffs allege no fraud in the insertion of this proviso (App. 80).

During the spring and summer of 1944 while Lease #3 was still operative, there were numerous conversations between the parties concerning its renewal, plaintiff, Jack Sekulow, endeavoring to renew at \$1000 per month or less, and defendant, Goda, putting him off. Lease #3 by its terms was not to expire until July 1945, so these negotiations admittedly started by Sekulow (App. 54) were commenced some thirteen or fourteen months prior to the expiration of Lease #3. Goda testified that there were twenty-five or thirty conversations between the parties, and that he told Sekulow that rather than renew Lease #3 at a figure of \$1000 per month he would forego renewing his lease with the owner because the venture was not profitable (App. 40, 89, 98).

At this point the Court's attention is called to the statement on Page 6 of Appellant's brief, "This (statement that Goda was not making money) was a false representation, though plaintiffs then had no knowledge that it was false." Appellant then goes on to argue that defendant Goda was actually making money when Lease #3 was in effect. This testimony was specifically excluded by the Trial Justice (App. 89, 90) on the grounds that it was irrelevant. There is no Finding of Fact that this statement was false, or that plaintiffs relied upon it. It is true that testimony concerning the income from the other floors of the building was later admitted (App. 104), but nowhere in the record is there any finding or any showing that the statement was false. Indeed, it might well be true, because

appellant has neglected to deduct from the alleged gross profit of \$800 per month the cost of furnishing heat, light, hot water, electric current, air conditioning (App. 15) required under Lease #3, in addition to repairs to the building, elevator service, janitor service and the normally expected loss through vacancies. The building is a 4-story and basement structure in the heart of the business district of Washington.

The conferences between the parties continued through the month of August 1944 when, Goda testified, he and Jack Sekulow arrived at an agreement to release Lease #3 and enter into a new lease (App. 96) at increased rentals, although in the new lease the rental provided in Lease #3 was to remain the same until it would have expired, namely, July 1, 1945. This oral understanding was denied by Sekulow (App. 57).

On Sept. 8, 1944, defendant's attorney mailed Lease #4 (the one now sought to be set aside) to plaintiffs and notified them by enclosed letter that the matter would have to be consummated by Sept. 15th. Lease #4 provided for rentals in excess of \$1000 per month (App. 16, 17). Plaintiffs sought an extension of time which was refused (App. 40). Plaintiff testified that there was no other space available, but at this time Lease #3 still had more than nine months to run.

Accordingly, plaintiff Jack Sekulow, accompanied by his attorney, Gilbert Stern, Esquire, met with defendant Goda at the office of Goda's attorney in Washington on Sept. 15, 1944. Mr. Stern stated there were a few things he would like to discuss. Goda stated "If you are not ready, if you are not going to sign this lease under these rentals, there is nothing to discuss." And he turned to Sekulow and said, "Jack, are you going to sign this lease?" And Sekulow replied, "Mr. Goda, if you put it to me that way, you leave me no other alternative but to sign the lease." (App. 58) The plaintiffs then sought relief from an undertaking in the proffered Lease #4 to rent the second floor in the

event it should become vacant during the new term and Goda refused (App. 86). Goda did agree to give them a letter permitting the sale of handbags at plaintiff's request. Plaintiff asked to see Goda's lease with the owner, which Goda refused (App. 85). Goda did agree to record his lease with the owner and also Lease #4. Goda then agreed to attach to Lease #4 a letter which he had procured from the owner and which permitted Goda to sublet to these plaintiffs for a term not to exceed the expiration of his lease with the owner, namely Sept. 30, 1950. This letter was seen and his signature affixed to it by Jack Sekulow (App. 75, 22). The parties then signed the release of Lease #3 (App. 15) and executed Lease #4 (App. 16-22 incl.) and paid Goda \$6300 as called for in Lease #4. On March 12, 1945, plaintiffs mailed to defendants letters seeking to set aside Lease #4 and purporting to exercise the option contained in Lease #3. This litigation followed.

STATEMENT OF POINTS.

1. The relation of landlord and tenant is not a fiduciary relationship.
2. There was no duty upon the defendants to inform the plaintiffs as to the defendant's right to renew.
3. The release of Lease #3 and the execution of Lease #4 by the plaintiffs was done voluntarily and without duress.
4. There is no showing that the defendants falsely represented that they would make no money, and defendants did not falsely threaten that they would not renew the master lease unless plaintiffs canceled their rights of renewal and made a new lease.
5. Plaintiffs knew on Sept. 15, 1944, that Goda still had a lease running to Sept. 30, 1950, but despite this they voluntarily released the renewal rights in Lease #3 and executed Lease #4.

6. There was no obligation on the part of the defendants, or either of them, to renew the master lease and they were at perfect liberty not to renew if they wished not to.

7. There was no duty on the defendants to disclose the terms of the defendants' lease and defendant Goda, far from refusing to disclose that he had renewed, actually gave documentary evidence of his renewal.

8. The Court did not err in finding: that the parties were dealing at arm's length; that there was no duress, threats of eviction or undue influence, nor what amounts to business compulsion, and that the plaintiffs voluntarily executed the release of Lease #3 and voluntarily executed Lease #4.

9. The Court did not err in finding: that the defendants were at liberty not to renew their option if they chose not to do so; in finding that the option provision did not create an absolute right on the part of the plaintiffs, and the Court did not err in finding that there was consideration for the execution of the release of Lease #3 and for the execution of Lease #4.

ARGUMENT.

Point 1.

The defendants did not fraudulently secure the release of Lease #3 and the execution of Lease # 4.

The whole case comes down to this: Goda stated that rather than renew his lease or the corporation's lease with the owner which would create in the plaintiffs a right to renew at not more than \$1,000 per month that he (Goda) would not renew. As an explanation of why he would not renew Goda stated that he was not making money on Lease #3. Plaintiffs now argue that he *was* making money and therefore he *would* renew and that such statement was false, and constitutes legal fraud. In the first place, as pointed out in defendant's brief under Statement of Case,

there was never any showing or any finding by the Trial Justice that the statement was false. But even if untrue, it clearly comes under the head of "puffing." Let us assume that he was making money—although plaintiff's alleged figure is clearly wrong, there being no deduction for expenses—perhaps he was not making *enough* money to warrant the inconvenience of taking care of the property. Who can say Goda would have renewed had he not made a new arrangement with plaintiffs? That Goda's threat not to renew induced plaintiffs to enter into the new lease goes without saying. But plaintiff's argument that Goda would have renewed anyway is even more of a conjecture than plaintiff's assertion that Goda was making money.

Smith v. Low, 57 App. D. C. 167; 18 Fed. 2d 817, cited by plaintiffs is merely authority for the proposition that a broker's misrepresentation as to the rental value of property, and his ability to secure a loan and procure a release of an existing deed of trust made to a person inexperienced in real estate matters is actionable. Those facts have no application to this case where the Court has found as a fact "that the parties were dealing at arm's length, that there was no duress, threats of eviction or undue influence."

Defendants are in complete agreement with *Seven Cases v. U. S.* (239 U.S. 510, 517; 59-60 L. Ed. 411) and *Sovereign Pochantas Co. v. Bond* (74 App. D.C. 175; 120 F. (2) 39), but assert that neither case has any application to the present facts.

Point 2.

The defendants did not procure the release of Lease #3 and the execution of Lease #4 as a result of business duress.

The doctrine of Business Duress goes a little further than the old common law rule of duress. It seems to be established that under certain circumstances, the payment of money or the making of a contract may be occasioned by such business necessity or compulsion as will render

the same voidable and will entitle the party so coerced to recover the money so paid or to excuse him from performing the contract.

In 79 A.L.R. at Page 655, there is an extensive annotation on the subject of Business Compulsion. But, in all of the cases there cited, the factual situations are much different from the one at bar. For instance, in the case of *Loneragan v. Buford*, 148 U.S. 581, the plaintiff had already paid some \$175,000 on the purchase of certain cattle. He admitted owing about \$6,000 more, but was told by the defendant that he would have to pay \$13,000 or the cattle would not be delivered. Apprehensive that the cattle would not properly be cared for and he already having put out a large sum of money, he paid the \$13,000 and sued for the recovery of the amount involuntarily paid. He recovered. But the Supreme Court of the United States, in upholding his recovery, quoted from *Mayor and City Counsel of Baltimore v. Lefferman* (4 Gill (Md.) 425), as follows: "A payment is not to be regarded as compulsory unless made to emancipate the person or property from an actual and existing danger, imposed upon it by the party to whom the money is paid."

Thus, for instance, there is a long line of cases to the effect that where a person wrongfully withholds another person's property and forces a payment to secure its release, that the payment is involuntary. But even in those cases, the relationship of the parties and the character of the property withheld is closely scrutinized. If the owner of property is in the legal and financial position to secure his property through legal means without the necessity of making the payment, the payment will not be regarded as involuntarily. The element of time is of extreme importance.

A reading of all the cases cited in 79 A.L.R., commencing at Page 655, leads to the conclusion that there must be an immediate threat of bankruptcy in not paying and not the mere pressure of financial circumstances.

In the instant case, the plaintiffs were told that if they did not agree to release the old lease and enter into a new lease at higher rentals that the defendant would not renew his lease with the owner. They were further told, after many conversations, that this had to be done by Sept. 15, 1944. The lease under which they were then operating did not expire by its terms until July 1, 1945. There was no immediate threat of eviction as that lease still had 9½ months to run. Just how they can possibly propose that this amounts to business compulsion is not quite clear. They had more than nine months in which to protect their rights. They could have gone into a Court of Equity and enjoined Goda from subleasing to any other person in derogation of their renewal rights. This injunction would have bound not only Goda, but the corporation which he owned and controlled, or any third person acting in his behalf. If they felt that Goda was sincere in his determination not to renew his lease with the owner they could have gone to the owner and offered to rent the property upon the termination of Goda's lease if he did not renew.

On Sept. 15, 1944, before Lease #3 was released and Lease #4 executed, Jack Sekulow and Gilbert Stern, his attorney, saw a letter dated Sept. 7, 1944, from the owner to Goda permitting Goda to sublease to Sekulow Bros. "for a term not to exceed the expiration date of your lease with us for the premises, *namely, Sept. 30, 1950.*" If the plaintiffs felt then, as they now argue, that since there was no verbal understanding with Goda concerning a new arrangement and since Goda already had a lease running to Sept. 30, 1950, why did they not refuse to release Lease #3 and seek specific enforcement of their renewal right? But instead of taking any of these steps plaintiffs as the Court found "voluntarily executed the release of Lease #3 and entered into Lease #4 at terms, which, although not as favorable as they wished, were accepted by them." It is submitted that the circumstances surrounding the entire transaction were such as completely to negative Business Duress, and the Court found "that there was not even what

amounts to extreme business compulsion as the plaintiffs' lease still had nine months to run." There was no threat of immediate substantial business loss facing them on that day. Here was no withholding of property which was perishable and which had to be redeemed and protected, and here, when they released the old lease and executed the new lease, they knew, or should have known, that Goda had already renewed his lease with the owner.

Point 3.

There is no fiduciary relationship between landlord and tenant.

Although there are some cases to the effect that when a sublessee with renewal rights goes over the head of the sublessor and secures a new lease direct with the owner, that said new lease is impressed with a trust in favor of the original sublessor. But it is submitted that the great weight of authority is to the effect that there is no fiduciary relationship between landlord and tenant.

As stated by the Court in *Davis v. Hamlin*, 108 Ill. 39: "It is the nature of the relation which is to be regarded, and not the designation of the one filling the relation."

In *Risk v. Rusher*, 19 Southern 2d 485 cited by the appellees, the Court stated: "The mere relation of landlord and tenant is not a fiduciary relation."

In *Flat Marks Realty Corp. v. Silvers Lunch Stores* (74 Fed. 2d 210) in an opinion by Hand, J., the Court stated: "Although equity has always been sensitive as to the acquisition by a fiduciary of renewals of leases, and will impose a constructive trust in favor of the prior lessee whenever the relation is established, the relation of sublessee to sub-lessor is *not* fiduciary."

In the case of *Brock Pemberton v. Windsor Leasing Co.* (58 N.Y.S. 2d 292), the facts were that Pemberton rented a theatre in Sept. 1944 agreeing to pay a percentage of the gross receipts as rent. The sub-lessor's lease was to expire in November 1945. In May 1945 the sub-lessor had

not yet been able to secure a renewal. The play was a great success, and the sub-lessor being still unable to renew, Pemberton approached and secured a lease direct with the owner. The Court held that the agreement of lease of Sept. 1944 created no fiduciary relation between the parties and stated, quoting from *Thayer v. Liggett* (229 N.Y. 152), "As a landlord is under no obligation to renew, so a stranger is under no obligation to respect the hopes and expectations of the tenant. On him rests no trust or duty. He may, if he can, obtain a lease to himself, and no legal or equitable obligation results, and an undertenant is a stranger within this rule."

In the case of *Gale v. McCullough* (118 Md. 287; 84 Atl. 469) cited by the appellants, the plaintiff, an elderly woman, was approached by a real estate broker seeking to secure a lease for a third party of certain land adjacent to her residence. Plaintiff had many times prohibited the use of this land as a public thoroughfare and the broker was aware of this fact. Plaintiff entered into a lease without having the opportunity of conferring with her sister who was her business adviser. Upon noticing that the tenant was tearing down a fence preparatory to installing a footwalk, she sought an injunction prohibiting this and canceling the lease on the grounds that the lease had been procured through fraud. The Court sustained her position by overruling a demurrer to the bill, but the quotation shown in Appellant's brief is mere obiter dicta and is a quotation adopted from *1st Stories Eq. Secs. 218, 323*.

Point 4.

The doctrine that any ambiguity in a written instrument be resolved against the one who drew it.

To state that any ambiguity in a written instrument must be resolved against the person who drew it is today to state a legal truism. Defendants are at a loss to understand why the plaintiffs in their argument cited so many cases to prove this point and to prove further that an am-

biguity in a lease must be construed in the favor of the lessee because before any of the cases could be considered, there must first be an ambiguity.

How can anyone say that there is an ambiguity in the phrase "and provided further that the lessor still occupies the premises as a tenant of the owner." The words mean exactly what they say, that if the lessor in Lease #3, 11th and F. St. Valet, or its alter ego, George Goda, or any third person acting in conspiracy with Goda, occupies the premises as a tenant of the owner, then plaintiffs would have renewal rights. But if defendants did not occupy the premises as a tenant after July 1, 1945, plaintiffs would have no renewal rights. Even if the testimony of the witness, Kelly, to the effect that he explained why this clause was inserted and the denial of this testimony by plaintiff is disregarded, it must be admitted that an experienced business man is bound to know the meaning of words.

No sublessor would bind himself to give renewal rights to a sublessee unless he was sure that he was going to renew himself because by so doing he binds himself to renew his lease with the owner. The prudent thing to do was what Goda did, which was to say, in effect—if I renew my lease—and I don't know whether I will or not at this stage because it depends on a number of things, such as my health, business conditions generally, my willingness to remain in Washington to look after the business, my desire to return to Hungary, or my desire to enter into a more profitable venture—but, if I renew, then you may renew. But if I choose not to renew, I am not going to leave myself in the position of having to renew. This phrase "provided the lessor still occupies the premises as a tenant of the owner", even if Kelly is disbelieved entirely, was noticed by the plaintiffs and a consultation had regarding it before the lease was signed. Certainly the clause was inserted for the protection of Goda, but if the plaintiffs did not like it, they should not have signed the lease. In addition the Court found "that there is no ambiguity in the phrase 'pro-

vided the lessee still occupies the premises as a tenant of the owner,' and that the defendants were at perfect liberty not to renew their option if they chose not to do so."

Point 5.

Plaintiffs argue that since Goda had already renewed his lease with the owner on September 7th, their right to renew became vested at that time, and hence there was no consideration for their release of their renewal right and the execution of Lease #4 on September 15th. But on September 15th Jack Sekulow and his attorney were shown a letter from the owner to Goda (which was subsequently attached to and incorporated by reference in Lease #4) which by its terms plainly spelled out that Goda then had a lease running to September 30, 1950. Plaintiffs vehemently denied any oral understanding concerning the release of Lease #3 and the execution of a new lease at higher rentals, and affirmatively stated that the first indication they had of this was when a letter was received from Goda's attorney on or about September 10th. Goda's testimony was in direct conflict with this as he testified there was an oral understanding in August. In support of Goda's testimony was his action—on September 7th he secured a renewal with the owner at a time when his lease still had almost ten months to run. He must have had an oral understanding else why would he risk having to renew with plaintiffs at \$1,000 per month?

The Court found "that there was consideration for the execution of the release of Lease #3 and for the execution of Lease #4." What was the consideration? They had been told that if they would not release Lease #3 and enter into a new lease at higher rentals that they wouldn't get a new lease. Seeking to save their business, or as Jack Sekulow put it, "I figured myself it was better to have half a loaf than not any," (App. 59) they voluntarily executed the release and new lease. There was other consideration, namely, (a) the recording the leases at the insistence of

the plaintiffs, (b) the written permission to sell handbags which they did not have in Lease #3, (c) a recognition by the owner of plaintiffs as sub-tenants, the last being, it is submitted, a very valuable right.

If the plaintiffs argue that they had a vested right to a renewal after Goda renewed on September 7th, and if they are presumed to have been aware of that fact as a result of being shown a letter that Goda's lease run to 1950, why on September 15th did they not take action to specifically enforce and protect their rights instead of releasing Lease #3? And it is most important to remember that the plaintiffs were represented by counsel on September 15th.

Point 6.

In defendant's joint answer in the Court below, it is admitted in Paragraph 2 that Goda informed the plaintiffs that he owned and controlled the corporation (App. 26). Defendants have no argument with plaintiff's statement that a corporation cannot be used as a cloak to perpetrate or protect fraud. It is true that in the Trial Justice's Memorandum Opinion there is a reference to a corporation being a non-conductor, but in the Findings of Fact and Conclusions of Law there is no mention of the separate identity of Goda and the corporation. That he owned and controlled the corporation and that it was his alter ego has never been denied. In the cross-examination of Jack Sekulow he stated that he had informed his counsel that Goda had represented himself as owning all the stock of the corporation (App. 71). This was not a case of Goda asserting "I will not renew in the corporation name, but instead will renew in my own name and thus defeat your renewal rights." Had it been, certainly counsel for the plaintiffs would have known how to stop that trick. It was a case of Goda stating, "Unless you accede to my terms, neither I nor Valet, Inc. which I control will renew with the owner." And being fearful that Goda would carry out his statement and thinking it wiser to have half a loaf than none at all, the plaintiffs acceded to Goda's wishes.

CONCLUSION.

The doctrine that the findings of fact of a Trial Justice will not be disturbed unless there was a clear abuse of discretion is a settled principle in this and every other jurisdiction. Plaintiffs now seek to have this Court find contrary to the findings of the Trial Justice, namely, "that the parties were dealing at arm's length, that there was no duress, threats of eviction or undue influence—nor even what amounts to extreme business compulsion * * *"

"In 3 *Am. Jur. Appeal & Error*, 896, it is said that the trial court is naturally in a better position to pass on the credibility of the witnesses, and that the appellate court will not, in fact, generally speaking, cannot, set itself up as a judge of the credibility of witnesses or weigh the evidence, even though a preponderance of it against the finding or verdict is apparent. The text continues: 'The question of credibility of witnesses and the weight to be given their testimony is exclusively within the province of the trial court; the province of the appellate court is to determine whether there is any evidence from which the trial court might properly have drawn its conclusion. As has been pointed out, discrepancies are more likely to appear in the record of the testimony of a candid witness than in that of an astute perjurer. These considerations have led the appellate courts to deal with findings of fact made by the trial judge, especially among oral testimony of witnesses, where he has had full opportunity to observe the demeanor of the witnesses and judge their veracity, in much the same manner as they would with the verdict of a jury, according to such findings the same conclusiveness and binding effect, or the same weight, as a verdict of the jury would have been accorded had one been rendered.'"

The verdict and judgment below should be affirmed.

Respectfully submitted,

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